

“TEXAS LOCAL FIRE FIGHTER’S RETIREMENT ACT”

TLFFRA PEER REVIEW TRUSTEE MANUAL



2013

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CHAPTER 1 – THE TRUSTEE

Like many Americans, **YOU** have chosen to volunteer your time, either through an elective process or through an appointed process, to be a part of a group that will bring a greater good to not only your future, but the futures of others as well. **YOU** have begun a journey to make the future a brighter place for your fellow fire fighters and their families. **YOU** have chosen to manage the investment decision making process for your local fire fighters' pension fund.

Why did **YOU** decide to become a trustee?

- Quest for Knowledge
- Political Reasons
- Financial Reasons
- Personal Gain
- Your Buddy Did It
- My Boss Told Me I Had To

More than 5 million men and women who serve in this role manage more than 80% of the nation's liquid investable wealth, yet few have received formal training in this role. Your presence here today recognizes the fact that you are serious in your role as a trustee of your pension fund.

By taking on this task, **YOU** have become a fiduciary of your pension fund? What does fiduciary mean?

A Fiduciary is someone who is managing the assets of another person and stands in a special relationship of trust, confidence, and/or legal responsibility.

You will hear a lot of terms that relate to **YOU** as a fiduciary:

Fiduciary Duty

Fiduciary responsibilities are the highest known to the law; they can be shared, but not relinquished.

Prudent Person

A prudent person is wise in handling practical matters and exercising good judgment and common sense; a person exercising caution or showing care or attention.

Trust

A Trust is a relationship in which one person (the trustee) holds the title (trust fund) for the benefit of another (the beneficiary).

Exclusive Benefit

The trust assets may not be diverted for purposes other than the support of the employee or their beneficiaries.

Fiduciary Liability

Liability exists where there are unfulfilled responsibilities. Fiduciaries can reduce their liability by identifying and filling gaps in their practices and maintaining consistency in their practices.

Your Personal Duties

In achieving **YOUR** duty as an investment fiduciary, there are Global Fiduciary Precepts that must be followed:

1. Know standards, laws and trust provisions
2. Diversify assets
3. Prepare and follow the investment policy statement
4. Use “prudent experts”
5. Account for investment expenses
6. Monitor the activities of “prudent experts”
7. Avoid conflicts of interest

A fund’s fiduciaries will ordinarily include the trustee, investment advisors, all individuals exercising discretion in the administration of the fund, all members of a fund’s administrative committee (if a committee exists), and those who select committee members. Attorneys, accountants, and actuaries generally are not fiduciaries when acting solely in their professional capacities.

The Key to determining whether an individual or an entity is a fiduciary is whether they are exercising discretion or control over the fund.

YOU will have even further duties outside of managing the investment portion of the pension fund:

1. Following open meetings and records procedures
2. Creating and maintaining a plan document(design) which outlines your processes
3. Approval of computations of service retirement, disability, and survivor benefits, etc.
4. Ensuring future retirees understand the retirement process and responding to issues relating to that process.(Provide benefit statements)
5. Getting the education and training necessary to become an effective trustee
6. Responding to the government bureaucracies responsible for oversight of your funds
7. Continually organizing, formalizing, implementing and monitoring processes relating to vendors, funds and policies
8. Representing the board and the fund consistent with the truth (not rumor!!)

With these fiduciary responsibilities, there is also potential liability. Fiduciaries that do not follow basic standards of conduct may be personally liable to restore any losses to the fund, or to restore any profits made through improper use of the fund's assets resulting from their actions. However fiduciaries can limit liabilities in certain situations:

1. Document, document, document
2. Make informed decisions, which requires asking questions
3. Hiring professionals in areas of expertise. Fiduciary responsibility can be shared, but never delegated away.
4. Monitor the expenses coming out of the fund including board travel and expenditures. This is not **YOUR** money!!

All this in one hour meetings once a month!! Are you up for the challenge??

This manual and training will allow **YOU**, as a trustee of a public defined benefit pension fund to be a better fiduciary of that fund, to know and **UNDERSTAND** the statutes and laws that govern your fund, to work with a Board of Trustees in overseeing the assets of that fund and in working with the day-to-day administrative processes to address the on-going needs of your members and board.

CHAPTER 2 - LEGAL ISSUES

Introduction

The authority for a TLFFRA pension system is clearly defined in the Texas Constitution and in state statute. Unlike private pension systems, your fire fighters' pension system is not subject to the federal oversight found in the Employees Retirement Income Security Act (ERISA). At a minimum, each TLFFRA trustee should read the following Articles of the Constitution and sections of state law governing pension systems

Article 16 Of The Texas Constitution

Section 17 - Officers to Serve Until Successors Qualified

All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

Section 66 - Protected Benefits under Certain Public Retirement Systems

Synopsis of Section 66 provides that any change made to service, disability, and death benefits provided by certain retirement systems cannot reduce benefits that a person was entitled to receive before the date of the change. The amendment places the responsibility for ensuring that those benefits are not reduced on both the retirement system and the governmental entities that finance the system. **Please note** that the Attorney General has broadly interpreted the protection from reduction in benefits, thereby possibly preventing a variety of changes that a TLFFRA fund may want to make to its plan. *See Texas Atty. Gen. Op No. GA-0615*, any change to your benefit design or structure that may impact current members should be analyzed to ensure it does not violate Section 66. See Section 66 to its entirety below.

(a) This section applies only to a public retirement system that is not a statewide system and that provides service and disability retirement benefits and death benefits to public officers and employees.

(b) This section does not apply to a public retirement system that provides service and disability retirement benefits and death benefits to fire fighters and police officers employed by the City of San Antonio.

(c) This section does not apply to benefits that are:

- (1) Health benefits;
- (2) Life insurance benefits; or

- (3) Disability benefits that a retirement system determines are no longer payable under the terms of the retirement system as those terms existed on the date the retirement system began paying the disability benefits.
- (d) On or after the effective date of this section, a change in service or disability retirement benefits or death benefits of a retirement system may not reduce or otherwise impair benefits accrued by a person if the person:
- (1) Could have terminated employment or has terminated employment before the effective date of the change; and
 - (2) would have been eligible for those benefits, without accumulating additional service under the retirement system, on any date on or after the effective date of the change had the change not occurred.
- (e) Benefits granted to a retiree or other annuitant before the effective date of this section and in effect on that date may not be reduced or otherwise impaired.
- (f) The political subdivision or subdivisions and the retirement system that finance benefits under the retirement system are jointly responsible for ensuring that benefits under this section are not reduced or otherwise impaired.
- (g) This section does not create a liability or an obligation to a retirement system for a member of the retirement system other than the payment by active members of a required contribution or a future required contribution to the retirement system.
- (h) A retirement system described by Subsection (a) and the political subdivision or subdivisions that finance benefits under the retirement system are exempt from the application of this section if:
- (1) The political subdivision or subdivisions hold an election on the date in May 2004 that political subdivisions may use for the election of their officers;
 - (2) The majority of the voters of a political subdivision voting at the election favor exempting the political subdivision and the retirement system from the application of this section; and
 - (3) The exemption is the only issue relating to the funding and benefits of the retirement system that is presented to the voters at the election.

Section 67 - State and Local Retirement Systems

Synopsis of Section 67 is that it gives the legislature the authority to enact general laws establishing systems and retirement programs for public employees and officers. Financing of benefits must be based on sound actuarial principles. Section 67 also provides that the assets of a system are held in trust for the benefit of members and may not be diverted. See Section 67 to its entirety below.

(a) General Provisions.

- (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.
- (2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas also may be authorized by law.
- (3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income there from as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.
- (4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems.

- (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.
- (2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of appellate courts and judicial districts as may be included under the system by law.
- (3) The amount contributed by a person participating in the Employees Retirement System of Texas or the Teacher Retirement System of Texas shall be established by the legislature but may not be less than six percent of current compensation. The amount contributed by the state may not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems.

- (1) The legislature shall provide by law for:
 - (A) The creation by any city or county of a system of benefits for its officers and employees;
 - (B) A statewide system of benefits for the officers and employees of counties or other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and
 - (C) A statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.
- (2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System.

- (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is

continued in effect. Contributions required and benefits payable are to be as provided by law.

- 2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.
- (e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.
- (f) Retirement Systems Not Belonging to a Statewide System. The board of trustees of a system or program that provides retirement and related disability and death benefits for public officers and employees and that does not participate in a statewide public retirement system shall:
- (1) Administer the system or program of benefits;
 - (2) Hold the assets of the system or program for the exclusive purposes of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the system or program; and
 - (3) Select legal counsel and an actuary and adopt sound actuarial assumptions to be used by the system or program.

Texas Local Fire Fighters' Retirement Act

The statutory authority for your local fire fighters' pension system is the Texas Local Fire Fighters' Retirement Act (Texas Revised Civil Statutes Article 6243e). Each trustee and administrator should read the entire Act and refer to it during each board meeting.

Short title

Section 1

This Act may be cited as the Texas Local Fire Fighters Retirement Act.

Definitions

Section 2

(1) "Contribution" means an amount of money paid by a municipality or other political subdivision to a retirement system or required to be paid periodically to a retirement system by or on behalf of a member of the retirement system for the purpose of financing benefits payable by the system.

(2) "Employee" means a person who regularly performs services for a fire department, who is a member of the retirement system that includes the fire department, and who regularly receives compensation for those services of at least \$200 a month. The term includes a person described by Subsection (d) of Section 9 of this Act who regularly receives compensation by the municipality or other political subdivision of at least \$200 a month

(3) "Fund" means a trust fund established in conjunction with a fire fighters' retirement system for the purpose of holding assets to be used to finance benefits payable by

(4) "Participating member" means an employee who is required to make periodic contributions to a retirement system or a volunteer who meets the requirements of Subsection (b) of Section 10 of this Act.

(5) "Regularly organized fire department" means a unit that is responsible primarily for fighting fires and responding to other emergencies each day and that has specialized equipment for use in performing those tasks.

(6) “Retiree” means a person who receives a benefit, other than a return of contributions, from a retirement system for services the person performed as a member.

(7) “Retirement system” means a fire fighters’ retirement system established as provided by Section 4 of this Act.

(8) “Volunteer” means a person who regularly performs services for a fire department, who is a member of the retirement system that includes the fire department, and who either receives no compensation for those services or regularly receives compensation for those services of less than \$200 a month. The term includes a person described by Subsection (d) of Section 9 of this Act who either receives no compensation for service to a municipality or other political subdivision or regularly receives compensation for that service of less than \$200 a month.

(9) “Compensation” includes amounts of workers' compensation benefits received by an employee and by which the employee's salary is reduced.

(10) “Determination date” means:

(A) the day before the effective date of an addition or change adopted by the board of trustees of a retirement system under Section 7 of this Act; or

(B) the date of divorce for a member or retiree whose benefits under this Act are subject to a qualified domestic relations order.

(11) “Vested accrued benefit” means the amount of the monthly benefit that a person is entitled to receive based on the person's service credit and compensation history as of the determination date under the benefit formula and other terms established by a retirement system, including a vested percentage where applicable, as those terms exist on the determination date. The vested accrued benefit of a member is calculated without regard to any optional form of payment the member may select at retirement. The term does not include cost-of-living increases that may be applied to a benefit after the determination date.

Application of Act

Section 3

(a) This Act applies to each municipality in the state that has a regularly organized fire department not consisting exclusively of volunteers, except:

(1) a municipality all of whose fire department personnel participate in the Texas Municipal Retirement System;

(2) a municipality whose fire department is governed by another state law providing for retirement benefits for fire department personnel; and

(3) a municipality that has in effect a program providing retirement benefits for fire department personnel that was established by charter or ordinance before September 1, 1989.

(b) This Act also applies to each municipality in the state that has a fire department that:

(1) consists exclusively of volunteers;

(2) was organized before September 1, 1989, and remains a regularly organized department; and

(3) does not participate in the statewide program provided by Chapter 269, Acts of the 65th Legislature, Regular Session, 1977 ([Article 6243e.3, Vernon's Texas Civil Statutes](#)).

(c) If a municipality's fire department consists partly of employees participating in the Texas Municipal Retirement System and partly of employees or volunteers not participating in that retirement system, this Act applies to the persons who are not participating in the Texas Municipal Retirement System. In that circumstance, a provision of this Act that applies to members of a retirement system or to members of a fire department applies only to those members who are participating in a retirement system under this Act.

(d) If a municipality's fire department consists partly of volunteers participating in the statewide program provided by Chapter 269, Acts of the 65th Legislature, Regular Session, 1977 ([Article 6243e.3, Vernon's Texas Civil Statutes](#)),

and partly of employees not participating in that program, this Act applies to the fire department personnel who are employees. In that circumstance, a provision of this Act that applies to members of a retirement system or to members of a fire department applies only to those members who are employees.

(e) In addition to the other applicability of this Act, this Act applies to a political subdivision that has a regularly organized fire department not consisting exclusively of volunteers, except a political subdivision whose fire department is governed by another state law providing for retirement benefits for full-time paid fire department personnel. If the political subdivision's fire department consists partly of volunteers eligible to participate in the program provided by Subtitle H, Title 8, Government Code, and partly of employees, this Act applies to fire department personnel who are employees.

Retirement System and Trust Fund

Section 4

Firefighters' retirement system and trust fund are established in each municipality or other political subdivision to which this Act applies. The board of trustees of each retirement system established by this Act shall hold or cause to be held in trust the assets appropriated or dedicated to the system or fund, separate from other money or accounts administered by the board of trustees or the municipality or other political subdivision, for the exclusive benefit of the members and retirees of the system and their beneficiaries.

Exemption from Judicial Process

Section 5

All amounts in a trust fund of a retirement system subject to this Act and all rights accrued or accruing under this Act to any person are exempt from garnishment, attachment, execution, state and municipal taxation, sale, levy, and any other process and are un-assignable.

Social Security

Section 6

Provisions of a retirement system may not be integrated with social security as

otherwise permitted under [Sections 401\(a\)\(4\), \(a\)\(5\), and \(l\) of the Internal Revenue Code of 1986](#) (26 U.S.C. Section 401).

Modification of Benefits and Eligibility

Section 7

(a) The board of trustees of a retirement system may change the benefits or eligibility requirements for benefits payable from the retirement system, may provide for reinstatement by a member of service credit previously forfeited, and may adopt or change other requirements for the payment of benefits, except as otherwise prohibited by this Act.

(b) Before a board of trustees chooses to adopt or change a benefit or requirement for payment of benefits under this section, the proposed addition or change must be approved by:

(1) an eligible actuary selected by the board; and

(2) a majority of the participating members of the retirement system voting on the addition or change by secret ballot at an election held for that purpose at which at least 50 percent of all participating members of the retirement system vote.

(c) To be eligible to approve an addition or change under this section, an actuary must be either a fellow of the Society of Actuaries or a member of the American Academy of Actuaries.

(d) Except as provided by Subsection (e) of this section, if a board chooses to adopt an addition or change after it has been approved as provided by this section, the addition or change applies to all persons who are participating members of the retirement system on the effective date of the addition or change and all persons who became participating members during the time the addition or change remains in effect. The addition or change also may apply to:

(1) persons receiving monthly benefits; or

(2) former members of the fire department who meet an applicable length-of-service requirement for service retirement.

(e) An addition or change adopted under this section may not, without the written

consent of the member, retiree, or eligible survivor under Section 15 of this Act, deprive a member of the retirement system, a retiree, or an eligible survivor of a right to receive a vested accrued benefit.

(f) The effective date of a change or addition adopted under this section is a date specified by the board of trustees that is not earlier than the date of adoption by the board. A change or addition may not be applied retroactive to its effective date unless required to maintain a plan's tax qualification status.

Recovery of Amounts Wrongfully Obtained

Section 8

The board of trustees of a retirement system subject to this Act may initiate or cause to be initiated a suit against any appropriate person to recover amounts paid or obtained from the trust fund through fraud, misrepresentation, theft, or other misapplication or by mistake. The board of trustees shall deposit amounts recovered under this section in the trust fund for the retirement system.

Membership

Section 9

a) Except as otherwise provided by this section, a person who is an employee of a fire department included within the coverage of a retirement system is a member of the retirement system if the person is younger than 36 years old on the date the person is certified under civil service as eligible for a beginning position with the department.

(b) Except as provided by Subsections (c), (d), (e), and (g) of this section, a person who performs services as a volunteer of a fire department included within the coverage of a retirement system is a member of the retirement system.

(c) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

- (1) require a waiting period before retirement system membership begins;
- (2) include within the required membership of the retirement system categories of personnel, other than personnel performing services for the fire department, who

perform emergency medical or fire department-related services; or

(3) exclude from membership categories of fire department personnel not regularly directly engaged in the fighting of fires.

(d) If a board of trustees, under Subdivision (2) of Subsection (c) of this section, includes categories of personnel within the membership of a retirement system, for purposes of this Act, the personnel are considered employees or volunteers, as applicable, of the fire department and their service is considered as if it were performed for the fire department included within the coverage of the retirement system.

(e) As a condition of membership in a retirement system, a board of trustees may by order require persons to pass a physical examination given by a physician of the board's choice but may not require the persons to pay the cost of the examination.

(f) A board of trustees of a retirement system for a fire department may by order authorize membership in the retirement system for employees of the department who are 36 years old or older at the time they become employees but who first became fire fighters at an age younger than 36. Membership under an authorization is optional with each employee, except that an employee must, before beginning membership, pass any physical examination requirement established under Subsection

(e) of this section.

(g) A service retiree of a retirement system may not rejoin or receive credit in the system for any postretirement service performed for the fire department included within the coverage of the system.

Service Credit

Section 10

(a) Service credit is earned in a retirement system for each month for which an employee makes the contribution required under this Act.

(b) Service credit is earned in a retirement system for each calendar year in which a volunteer answers at least 25 percent of all fire alarms determined by the board of trustees and attends at least 40 percent of all drills held by the fire department.

(c) A retirement system shall also grant service credit to a member who leaves the service of a fire department and later returns, if the break in service is attributable to service for any period as a member of the armed forces of the United States during a war or national emergency.

(d) Absence from service by an employee does not forfeit service credit accrued before the absence begins, unless membership is terminated. Absence from service by a volunteer does not forfeit service credit accrued before the absence begins.

(e) A board of trustees established under this Act may, in accordance with Section 7 of this Act, expand the circumstances under which service credit is earned.

Previous Fire Department Service

Section 11

(a) Except as provided by Subsection (c) of this section, a person who elects to become a member of a retirement system under an authorization adopted under Subsection (f) of Section 9 of this Act may establish credit in the retirement system for previous service performed for another fire department included within the coverage of a retirement system under this Act. To establish credit for the previous service, the person must deposit with the retirement system an amount determined by the board of trustees that is equal to the sum of:

(1) the amount that the person would have contributed to the system if the person's previous fire department service had been performed for the department by which the person is employed, computed on the member contribution rate in effect in the retirement system at the time the service was performed and on the person's compensation for the previous service; and

(2) interest on the amount described by Subdivision (1) of this subsection at the rate of eight percent, compounded annually, from the date the service was performed to the date of deposit.

(b) If a person makes the deposit described by Subsection (a) of this section, the municipality or other political subdivision served by the fire department that employs the person shall deposit with the retirement system an amount determined by the board that is equal to the sum of:

(1) the amount that the municipality or other political subdivision would have contributed to the system if the person's previous fire department service had been performed for the department by which the person is employed, computed on the contribution rate of the municipality or other political subdivision in effect in the retirement system at the time the service was performed and on the person's compensation for the previous service; and

(2) interest on the amount described by Subdivision (1) of this subsection at the rate of eight percent, compounded annually, from the date the service was performed to the date of deposit.

(c) A person may not establish credit under this section for service that is credited in another public retirement system, including another retirement system subject to this Act.

Service Retirement

Section 12

(a) A member of a retirement system is eligible for retirement for service if the member is at least 55 years old and has performed at least 20 years of service that is credited in the retirement system.

(b) Except as provided by Subsection (c) of this section, monthly benefits payable for service retirement are \$100 to a retiree whose service was not exclusively as a volunteer and \$25 to a retiree whose service was exclusively as a volunteer.

(c) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

(1) decrease the age or service requirements for service retirement from a particular retirement system; or

(2) determine formulas for computing benefits, classes of permissible beneficiaries, and other requirements for payment of service retirement benefits, as long as the minimum benefits payable to a retiree are not less than the amounts provided by Subsection (b) of this section.

Certificate of Service

Section 13

(a) A member of a retirement system who meets an applicable length-of-service requirement for service retirement benefits but does not meet the applicable age requirement for service retirement benefits may terminate employment with or otherwise discontinue service for the fire department and remain eligible to receive service retirement benefits from the retirement system on attaining the applicable age, as long as the member does not withdraw contributions in the retirement system.

(b) A member who terminates employment or otherwise discontinues service after meeting an applicable length-of-service requirement for service retirement may not be required to pay to the retirement system contributions that become due after the date of termination or discontinuance.

Disability Retirement

Section 14

(a) A member of a retirement system is eligible for retirement for disability if the member becomes physically or mentally disabled, except as the result of a condition the member had on the date the member became an employee or volunteer, in or in consequence of the performance of the member's duties as an employee or volunteer of the fire department included within the coverage of the retirement system.

(b) An application for disability retirement must be filed with the board of trustees of the retirement system of which the applicant is a member. The application must contain a sworn statement of the member's medical condition, signed by a physician attending the member, and a sworn statement of the circumstances under which the disability arose, signed by the member or another person who has reason to know those circumstances. The application also may contain other pertinent information to enable the board to determine whether the member is eligible for disability retirement.

(c) A board of trustees may require an applicant for disability retirement to be medically examined by one or more physicians of the board's choice but may not

require the applicant to pay the cost of a medical examination required under this subsection.

(d) If a board of trustees determines that an applicant for disability retirement meets the eligibility requirements for disability retirement from the retirement system, the board shall retire the member.

(e) Except as provided by Subsection (f) of this section, monthly benefits payable for disability retirement are \$100 to a retiree whose service was not exclusively as a volunteer and \$25 to a retiree whose service was exclusively as a volunteer.

(f) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

(1) expand the circumstances under which disability retirement benefits become payable;

2) require periodic medical examinations of, periodic vocational rehabilitation examinations of, or periodic financial information from disability retirees to determine whether the retiree remains eligible to receive disability retirement benefits; or

(3) determine formulas for computing benefits, classes of permissible beneficiaries, and other requirements for payment of disability retirement benefits, as long as the minimum benefits payable to a retiree who remains eligible for disability retirement resulting from the performance of duty are not less than the amounts provided by Subsection (e) of this section.

(g) The vested accrued benefit of a retiree under this section who is retired as of the determination date is subject to the terms established by the retirement system as those terms exist on the determination date and is payable to the retiree only if the retiree meets the eligibility requirements established by the board of trustees under this section.

(h) Notwithstanding any other provision of this Act, a disability retirement benefit is not a vested accrued benefit until a member becomes disabled under the terms of the retirement system.

Death Benefits

Section 15

(a) A death benefit is payable as provided by this section on the death:

(1) of a member of a retirement system that occurs in or in consequence of the performance of the member's duties as an employee or volunteer of the fire department included within the coverage of the retirement system;

(2) of a member of a retirement system for any reason if the member met the applicable length-of-service requirement for service retirement at the time of death; or

(3) of a retiree of a retirement system.

(b) Except as otherwise provided by this section, monthly benefits payable on the death of a member or retiree are:

(1) \$100 to an eligible surviving spouse of a member or retiree whose service was not exclusively as a volunteer and \$16.67 to an eligible surviving spouse of a member or retiree whose service was exclusively as a volunteer;

(2) if there is an eligible surviving spouse and a minor child, \$20 to the guardian of each minor child of a member or retiree whose service was not exclusively as a volunteer and \$6 to the guardian of each minor child of a member or retiree whose service was exclusively as a volunteer;

(3) if there is no eligible surviving spouse at the time of death of the member or retiree or if the surviving spouse dies or becomes ineligible to receive benefits during the minority of a surviving child, \$40 to the guardian of each minor child of a member or retiree whose service was not exclusively as a volunteer and \$12 to the guardian of each minor child whose service was exclusively as a volunteer; and

(4) if there is no eligible surviving spouse or minor child at the time of death of the member or retiree, a total of \$100 to one or more surviving dependent parents of a member or retiree whose service was not exclusively as a volunteer and a total of \$16.67 to one or more dependent parents of a member or retiree whose service was exclusively as a volunteer.

(c) To be eligible to receive benefits as a surviving spouse under this section, a

person must remain unmarried after the death of the member or retiree. To be eligible to receive benefits as a surviving spouse of a deceased retiree, a person also must have married the deceased before the deceased's retirement. To be eligible to receive benefits as a surviving spouse of a deceased member who had terminated employment with or otherwise discontinued service for the fire department, a person also must have married the deceased before the termination or discontinuance.

(d) If a member or retiree for whom death benefits are payable under this section is survived by a child who is totally disabled as a result of physical or mental illness, injury, or retardation, the guardian of the child is entitled to receive for the benefit of the child and the duration of the child's disability any benefit that would be payable to the guardian of a surviving minor child.

(e) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

- (1) expand the circumstances under which death benefits become payable; or
- (2) determine formulas for computing benefits, classes of permissible beneficiaries, exclusions from payment of benefits for certain causes of death, and other conditions for payment of death benefits.

(f) The vested accrued benefit that an eligible survivor receives under this section as the result of the death of a member or retiree on or before the determination date is subject to the terms established by the retirement system as those terms exist on the determination date.

(g) Notwithstanding any other provision of this Act, a death benefit is not a vested accrued benefit until the member or retiree for whom death benefits are payable dies.

Reduction of Benefits during Deficiency

Section 16

If money available for benefits currently payable by a retirement system is insufficient to pay the full amount of those benefits, a board of trustees may proportionately reduce all benefit payments for the time necessary to prevent

payments from exceeding money available to pay the benefits.

Person Causing Death of Member or Annuitant

Section 17

(a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent. If no person would be entitled to the benefit, the benefit is payable to the decedent's estate.

(b) A retirement system is not required to pay a benefit under Subsection (a) of this section unless it receives actual notice of the conviction of the person who would have been entitled to the benefits. However, a retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

- (1) has pleaded guilty or nolo contendere to or has been found guilty by a court of an offense at the trial of which it is established that the person's intentional, knowing, or reckless act or omission resulted in the death of a person who was a member or annuitant, regardless of whether sentence is imposed or probated; and
- (2) has no appeal of the conviction pending and the time provided for appeal has expired.

Provisions Applicable to Boards of Trustees Generally

Section 18

(a) A board of trustees established under this Act may receive, handle, control, manage, and disburse the fund for the retirement system, hear and determine all applications for retirement and claims for disability, either partial or total, and designate beneficiaries and participants as provided by this Act. The chairman and vice chairman of a board may swear witnesses for the purpose of taking testimony before the board on any matter related to the fund. A board may issue a subpoena

addressed to a sheriff or constable to require the attendance of a witness or the production of books, records, or other documents that may be necessary and proper for the purposes of a proceeding before the board.

(b) A member of a board of trustees established under this Act takes office on the first meeting of the board that occurs after the member is elected or designated a member or assumes the position that makes the person a member ex officio. At the time a person takes office as a member of a board of trustees established under this Act, the person shall take an oath of office that the person will diligently and honestly administer the affairs of the retirement system and fund and will not knowingly violate or willingly permit to be violated any provision of this Act.

(c) A board of trustees established under this Act shall meet monthly at such times and places as the board by resolution designates and at other times at the call of the chairman. A majority of the trustees of a board is a quorum.

(d) A board established under this Act shall keep accurate minutes and records of its proceedings and a record of all claims, receipts, and disbursements relating to the fund. An order of a board must be made by vote recorded in the minutes of its proceedings.

(e) A board established under this Act may make a disbursement from the fund only on a regular voucher signed by one or more persons designated by the board. Subject to the approval of a majority of the participating members voting by secret ballot at an election at which at least 50 percent of the participating members of the retirement system vote, a board established under this Act shall determine whether the signatures of one, two, or three persons are required for vouchers.

(f) A board of trustees established under this Act may designate a bank or, as applicable, the chief financial officer of the municipality or other political subdivision or the secretary-treasurer of the board to be custodian of the assets of the retirement system. If the chief financial officer or the secretary-treasurer of the board is designated custodian, the person's official bond and oath of office are conditioned additionally on the faithful performance of the person's duties as custodian of the assets of the retirement system.

(g) Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013

(h) A vacancy in the office of a trustee of a board established under this section shall be filled for the remainder of the unexpired term in the manner that the office was previously filled.

Enforcement of Act

Section 18A Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013.

Technical Assistance, Training, and Information for Boards of Trustees

Section 18B

(a) The State Pension Review Board shall provide technical assistance, training, and information to members of the boards of trustees established under this Act. The training required by this section must be designed to meet the specific needs of members of boards of trustees administering benefit plans for local fire fighters, including small-to-medium-sized benefit plans.

(b) To the extent resources are available, the board shall designate one person who specializes in providing the technical assistance, training, and information required under Subsection (a).

Board of Trustees for Paid or Part-Paid Fire Department

Section 19

(a) In each municipality and other political subdivision to which this Act applies and that has a fire department that does not consist exclusively of volunteers, the fire fighters' retirement system is governed by a board of trustees consisting of:

(1) in a municipality, the mayor or the mayor's designated representative; in an emergency services district, the president of the board of emergency services commissioners; or in another political subdivision, the chief operating officer or the chief operating officer's designated representative, as applicable;

(2) the chief financial officer of the municipality or other political subdivision or, if there is no officer denominated as chief financial officer, the person who performs the duties of chief financial officer or a person designated by the chief financial officer or by the person performing the duties of chief financial officer;

(3) three members of the retirement system elected by participating members as

provided by Subsection (b) of this section; and

(4) two persons who reside in this state, who are not officers or employees of the municipality or other political subdivision, and who are elected by a majority vote of the members of the board of trustees determined as provided by Subdivisions (1), (2), and (3) of this subsection.

(b) During each period that begins on December 1 of one year and ends on January 31 of the following year, the participating members of a fire fighters' retirement system in a municipality or other political subdivision subject to this section shall elect by secret ballot and certify to the governing body of the municipality or other political subdivision a member to the board of trustees to serve a term of three years. To be elected a member of a board of trustees under this subsection, a person must be a participating member of the retirement system and receive a majority of the votes cast in the election, and at least 50 percent of all participating members of the retirement system must vote in the election. Provided, however, that if only a single person is nominated for the board of trustees position being filled, that person may be elected by acclamation by those participating members present for the election meeting, without the necessity of a secret ballot.

(c) Annually, at a meeting in March, the members of a board of trustees determined as provided by Subdivisions (1), (2), and (3) of Subsection (a) of this section shall elect a member to the board, as provided by Subdivision (4) of Subsection (a) of this section, to serve a term of approximately two years that expires on the day before the date of the first board meeting that occurs after the meeting at which a successor is elected.

(d) A board of trustees established under this section annually shall elect a chairman, vice-chairman, and secretary.

(e) Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013

Board of Trustees for Volunteer Fire Department

Section 20

(a) In each municipality to which this Act applies and that has a fire department consisting exclusively of volunteers, the firefighters' retirement system is governed by a board of trustees consisting of:

- (1) the mayor of the municipality or the mayor's designated representative;
- (2) the municipal treasurer or, if there is no officer denominated as treasurer, the person who performs the duties of municipal treasurer; and
- (3) three members of the retirement system elected by participating members as provided by Subsection (b) of this section.

(b) During each period that begins on December 1 of one year and ends on January 31 of the following year, the participating members of a firefighters' retirement system in a municipality subject to this section shall elect by secret ballot and certify to the governing body of the municipality a member to the board of trustees to serve a term of approximately three years that expires on the day before the date of the first board meeting that occurs after the election of a successor. To be elected a member of a board of trustees under this subsection, a person must be a member of the retirement system and receive a majority of the votes cast in the election, and at least 50 percent of all participating members of the retirement system must vote in the election.

(c) The municipal treasurer is the secretary-treasurer of a board of trustees established under this section. A board of trustees established under this section annually shall elect a chairman and a vice-chairman to preside in the absence or disability of the chairman.

Firefighters' Pension Commissioner

Section 21 Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013

General Duties of Firefighters' Pension Commissioner

Section 21A Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013

Appeals from Local Board Decisions

Section 22

(a) A person aggrieved by a decision of a board of trustees relating to eligibility for or amount of benefits payable by a retirement system may appeal the decision to the State Office of Administrative Hearings.

(b) An appeal under this section is begun by delivering a notice of appeal with the chairman, secretary, or secretary-treasurer of the board of trustees that made the decision. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons or grounds for appeal. The aggrieved person must file a copy of the notice with the State Pension Review Board.

(b-1) As soon as practicable after receiving a notice of appeal under Subsection (b) of this section, the State Pension Review Board shall refer the matter to the State Office of Administrative Hearings by submitting notice of the appeal to that office.

(c) An appeal under this section is held in Austin and is a contested case under Chapter 2001, Government Code, conducted as a de novo hearing by the State Office of Administrative Hearings.

(d) The sole function of the State Pension Review Board with respect to an appeal under this section is to refer the appeal to the State Office of Administrative Hearings, and that office has exclusive authority to decide the appeal.

Attorney

Section 22A

A board of trustees may employ an attorney to represent the board in one or all legal matters, including a hearing on appeal to the State Office of Administrative Hearings. At the request of a board of trustees, the city attorney of the municipality of which the board is a part shall, without additional compensation, represent the board in one or all legal matters.

Actuary

Section 23

(a) A board of trustees established under this Act may employ an actuary to provide actuarial services.

(b) The cost of actuarial services may be paid from assets of the fund.

Certified Public Accountant

Section 24

(a) A board of trustees established under this Act may employ a certified public accountant or a firm of certified public accountants to perform an audit of the fund in accordance with Section 12.102, Title 110B, Revised Statutes.

(b) The cost of an audit may be paid by the municipality or other political subdivision or from the assets of the fund.

Other Expenses

Section 25

(a) Except as provided by Subsection (b) of this section, a board of trustees established under this Act may pay from assets of the fund all costs reasonably and lawfully incurred by the retirement system and the costs of actual expenses incurred by board members in the performance of their duties on the board. A member of the board may not receive compensation for service on the board.

(b) The annual amount of payments from a fund under this section, excluding legal and medical fees, may not exceed:

(1) 1 percent of the market value of the assets of the fund for the first \$1 million in market value; and

(2) 1/4 of 1 percent of the market value of the assets of the fund that exceeds \$1 million.

Gifts Accepted from any Source

Section 26

The board of trustees of a retirement system established under this Act is authorized to accept and receive for the use and benefit of the fund, in addition to member contributions and contributions of the municipality or other political subdivision, gifts of money from any source.

Investment of Assets

Section 27

(a) A board of trustees established under this Act shall keep a sufficient amount of cash on hand to make payments as they become due under the retirement system. If a board determines that the fund of its retirement system contains an amount in excess of the amount needed to make payments as they become due, the board may invest any portion of the excess.

(b) In making investments for a retirement system, its board of trustees shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.

(c) A board of trustees established under this Act may not invest in the stock or bonds of one corporation more than five percent of the book value of the assets of a fund. A retirement system may not own more than five percent of the voting stock of one corporation.

(d) A board of trustees established under this Act shall adopt formal investment policies that emphasize safety and diversity as well as liquidity for benefit payments. In developing those policies, the board of trustees shall give special consideration to the preferred investment practices of the Government Financial Officers Association..

Investment Manager and Counseling Service

Section 28

(a) The board of trustees of a retirement system established under this Act may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under Subsection (a) of this section, an investment manager must be:

(1) registered under the Investment Advisors Act of 1940 ([15 U.S.C. Section 80b-1 et seq.](#));

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the board of trustees shall specify policies, requirements, and restrictions, including criteria for determining the quality of investments and for the use of standard rating services that the board of trustees adopts for investments of the system.

(d) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the board of trustees must act prudently and in the interest of the participants and beneficiaries of the retirement system.

(e) A trustee is not liable for the acts or omissions of an investment manager appointed under this section, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(f) A board of trustees established under this Act may employ professional investment counselors to assist and advise the board in the investment of the assets of the fund or to evaluate the performance of an investment manager appointed under this section. The investment counseling service must be provided by an organization whose business functions include performing continuous investment advisory service to public retirement systems.

(g) The cost of investment managing or counseling services may be paid by the municipality or other political subdivision or from the assets of the fund.

(h) A retirement system established under this Act is exempt from Subchapter C, Chapter 802, Government Code, except Sections 802.202, 802.205 and 802.207.

Contributions

Section 29

(a) Each person who is a member of a retirement system as a current fire

department employee shall make contributions to the system. Except as provided by Subsection (d) of this section, a contribution required under this subsection is computed on the employee's periodic compensation at a rate determined by majority vote of the employees of the department who are members, at an election by secret ballot at which at least 50 percent of those employees vote. Except as provided by Section 30 of this Act, the payroll officer of the municipality or other political subdivision shall deduct the contributions required under this subsection each payroll period and submit them to the retirement system.

(b) A municipality or other political subdivision that has employees who are participating members of a retirement system shall make contributions to the system each payroll period. Except as provided by Subsection (d) of this section; contributions required under this subsection are computed on the total compensation paid to the employees who are participating members of the system. A municipality or other political subdivision is required to make contributions under this subsection at the same rate paid by employees or 12 percent, whichever is the smaller rate. The governing body of a municipality or other political subdivision by ordinance may adopt a rate of employer contributions that is greater than the rate required by this subsection.

(c) Contributions by a municipality or other political subdivision determined under Subsection (b) or (d) of this section are payable each payroll period to the retirement system.

(d) Contributions required under Subsections (a) and (b) of this section are computed on the average compensation of all employees of the department for the preceding year, if this method of computation is adopted by majority vote of the employees of the department who are members, at an election by secret ballot at which at least 50 percent of the participating members vote, and is also adopted by ordinance of the governing body of the municipality or other political subdivision. The average compensation of department employees shall be computed for each 12-month period as determined by the board of trustees.

(e) Each person who is a member of a retirement system as a current fire department volunteer shall contribute to the system an annual amount determined by majority vote by secret ballot of the volunteers of the department who are participating members of the retirement system. A municipality may at any time

make the member contributions required under this subsection on behalf of its volunteers and any other contributions the municipality chooses to make to the retirement system.

(f) Payment of member contributions required under this Act are conditions of employment and participation in the retirement system to which the contributions are due.

(g) Except as otherwise provided under Section 7 of this Act, a member of a retirement system may withdraw all of the member's accumulated contributions to the system if the member terminates service for the fire department included within the coverage of the system for a reason other than service or disability retirement. The estate of a deceased member may withdraw all of the deceased member's accumulated contributions if a survivor or alternative monthly benefit is not payable as a result of the death. A withdrawal of contributions cancels a person's membership and credit in the retirement system.

Pick up of Employee Contributions

Section 30

(a) A municipality or other political subdivision may pick up the employee contributions required by Subsection (a) of Section 29 of this Act for all compensation that is earned by participating members of the retirement system on or after the effective date of the pick-up. Employee contributions picked up as provided by this section are in lieu of deductions of employee contributions from paychecks or warrants and shall be paid by the municipality or other political subdivision to the retirement system from the same source of funds that is used in paying compensation to the members. A pick-up of employee contributions shall be accompanied by a reduction in the compensation of members, an offset against a future increase in member compensation, or a combination of compensation reduction and offset against a compensation increase. Unless otherwise determined by the governing body of the municipality or other political subdivision and approved by majority vote of the participating members at an election by secret ballot, a pick-up of contributions results in a corresponding reduction in compensation.

(b) Contributions picked up as provided by this section shall be treated as employer

contributions in determining tax treatment of the amounts under the Internal Revenue Code of 1986. Employee contributions picked up as provided by this section shall be deposited to the credit of the individual account of each affected member and shall be treated for all other purposes of this Act as if the contributions had been deducted from the compensation of members. Picked up contributions are not includable in a computation of contribution rates of the municipality or other political subdivision.

(c) A pick-up of employee contributions takes effect in a municipality or other political subdivision on January 1 of the year following the year in which:

- (1) the governing body of the municipality or other political subdivision by ordinance has adopted the pick-up;
- (2) the pick-up has been approved by majority vote of the participating members of the retirement system at an election by secret ballot at which at least 50 percent of the participating members vote; and

(3) Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013

(d) A pick-up of employee contributions is terminated in a municipality or other political subdivision on January 1 of the year following the year in which:

- (1) the termination has been approved by a two-thirds vote of the participating members of the retirement system at an election by secret ballot at which at least 50 percent of the participating members vote; and
- (2) the governing body of the municipality or other political subdivision has repealed the ordinance that adopted the pick-up of employee contributions.

Termination of Participation in Act

Section 31

(a) A retirement system for a fire department not consisting exclusively of volunteers may not be terminated or merged into another retirement system without the approval of the board of trustees of the retirement system and the approval of the participating members of the system in the manner described by Subdivision (2) of Subsection (b) of Section 7 of this Act provided 51 percent of the volunteers first petition the board for such change.

(b) The board of trustees of a retirement system for a fire department consisting partly of employees and partly of volunteers may transfer assets actuarially attributable to the volunteers from the retirement system under this Act to the statewide program provided by the Texas Statewide Volunteer Fire Fighters Retirement Act ([Article 6243e.3, Vernon's Texas Civil Statutes](#)), if the board obtains approval as provided by Section 7 of this Act provided 51 percent of the volunteers first petition the board for such change.

(c) Repealed, under Acts 2013, 83rd Leg, eff. Sept. 2013 under 83rd Leg, eff. Sept 1, 2013).

Confidentiality of Information about Members, Retirees, Annuitants, or Beneficiaries

Section 32

(a) Information contained in records that are in the custody of a retirement system established under this Act concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 ([Article 6252-17a, Vernon's Texas Civil Statutes](#)), and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual's attorney, guardian, executor, administrator, conservator, or other person who the board of trustees of the retirement system determines is acting in the interest of the individual or the individual's estate;

(C) a spouse or former spouse of the individual if the board of trustees determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed under an authorization of the board of trustees that specifies the reason for the disclosure.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or

Under TLFFRA Section 22:

(a) a person aggrieved by a decision of a board of trustees relating to eligibility for or amount of benefits payable by a retirement system may appeal the decision to the State Office of Administrative Hearings

(b) An appeal under this section is begun by delivering a notice of appeal with the chairman, secretary, or secretary-treasurer of the board of trustees that made the decision. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons or grounds for appeal. The aggrieved person must file a copy of the notice with the State Pension Review Board.

(b-1) As soon as practicable after receiving a notice of appeal under Subsection (b) of this section, the State Pension Review Board shall refer the matter to the State Office of Administrative Hearings by submitting notice of the appeal to that office.

(c) An appeal under this section is held in Austin and is a contested case under Chapter 2001, Government Code, conducted as a de novo hearing by the State Office of Administrative Hearings.

(d) The sole function of the State Pension Review Board with respect to an appeal under this section is to refer the appeal to the State Office of Administrative Hearings, and that office has exclusive authority to decide the appeal.

beneficiary of the retirement system.

(c) A determination and disclosure under Subsection (a) of this section may be made without notice to the individual member, retiree, annuitant, or beneficiary.

Appeals Of Local Board Decisions

TLFFRA board trustees need to be aware that an aggrieved person may appeal their decision regarding a benefit award. In the event that an appeal is filed, a trustee should review both the TLFFRA Section 22 and the Administrative Procedure Act (Texas Government Code §2001.001 et. seq.).

Step 1: Notify Applicants of Appeal Process

The board shall provide a Notice of Appeal/Complaint Form and a copy of the appeal procedures with every application for benefits (refund, retirement, disability, spouse benefit, correction of errors, etc.) that the board distributes. This should provide the applicant with sufficient notice to file an appeal in the event that they need to contest the benefit determination.

Step 2: Appellant Must File Appeal with Board within 20 days

The appellant should complete the form including a reference to the section(s) of the statute (Article 6243e.V.T.C.S.) or the section(s) of the fund's plan that forms the basis of the appeal. The aggrieved person initiates an appeal by delivering a notice of appeal with the chairman, secretary, or secretary-treasurer of the board of trustees that made the decision. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons or grounds for appeal. The aggrieved person must file a copy of the notice with the State Pension Review Board. Upon receipt of the notice of appeal, the State Pension Review Board will immediately refer the matter to the State Office of Administrative Hearing by submitting the Appeal to them. The sole function of the State Pension Review Board with respect to an appeal under this section is to refer the appeal to the State Office of Administrative Hearings, and that office has exclusive authority to decide the appeal.

Applicable Laws

1. TLFFRA;
2. SOAH's procedural rules, which are codified at 1 TEX. ADMIN. CODE CHAPTERS 155 THROUGH 159;
3. The Administrative Procedure Act, TEX. GOV'T CODE ANN. CHAPTER 2001;
4. The Texas Rules of Evidence;
5. The Texas Rules of Civil Procedure.

Step 3: Processing of Appeal

An appeal under this section is held in Austin and is a contested case under the APA and is conducted as a de novo hearing by SOAH. Traditionally, the party seeking relief is the party with the burden of proof.

The Board should be represented at the hearing and evidence submitted into the record supporting the Board's decision. You should consult with your attorney; however your local board should be prepared to submit into evidence the following documents:

- Notice of Appeal/Complaint Form
- Board order, if any, containing the board's decision
- Minutes of the meeting in which the board's decision was made.
- Current plan document (plan design) for the fund.
- Appellant's benefit form(s).
- Medical records.
- Any other records pertaining to the case.

Synopsis of The Texas Open Meetings Act and the Public Information Act (Govt. Code Chapters 551 and 552) apply to nearly every governmental body in Texas. Each trustee must understand that the discussion of pension business must be conducted in the open and that they cannot violate the act by deliberating about public business without a quorum being physically present. They must understand that information requested in writing may only be withheld upon the authority of the Attorney General's Office. A summary of Title 5 is included in this section along with links to the complete statutes and related Attorney General's Office Publications.

The Texas Government Code

Open Government (Government Code Title 5)

This is significant because a failure to comply with either the Open Meetings Act or Public Information Act may result in civil and criminal penalties for public officials, and can also lead to a general breakdown of confidence in our governing bodies.

Open Government Training Information

The Office of the Attorney General has found that in most cases where a governmental body violates the open government laws, it is the result of public officials simply not knowing what the law requires. Inconsistent and inaccurate legal advice regarding these laws has sometimes added to the confusion.

Elected or appointed governmental officials must have a minimum of one hour but no more than two hours of training. Officials who are elected or appointed after January 1, 2006 have 90 days to complete the required training.

Ignorance Is the Penalty for Failure to Receive Training

The purpose of the law is to foster open government by making open government education a recognized obligation of public service. The purpose is not to create a

new civil or criminal violation, so there are no specific penalties for failure to comply with the mandatory training requirement. Despite the lack of a penalty provision, officials should be cautioned that a deliberate failure to attend training may result in an increased risk of criminal conviction should they be accused of violating the Act.

Open Meetings curriculum

- the general background of the legal requirements for open meetings;
- the applicability of the Open Meetings Act to governmental bodies;
- procedures and requirements regarding quorums, notice, and record-keeping under the Open Meetings Act;
- procedures and requirements for holding an open meeting and for holding a closed meeting; and
- penalties and other consequences for failure to comply with the Open Meetings Act

Public Information Act curriculum

- the general background of the legal requirements for open records and public information;
 - the applicability of the Public Information Act to governmental bodies;
 - procedures and requirements regarding complying with open records requests;
 - the role of the attorney general under the Public Information Act; and
 - penalties and other consequences for failure to comply with the Public Information Act
- Open Meetings Act (Government Code Chapter 551.)

Government Code Chapter 551 Open Meetings Act (the “Act”) was adopted to help make governmental decision-making accessible to the public. It requires meetings of governmental bodies to be open to the public, except for expressly authorized closed sessions, and to be preceded by public notice of the time, place and subject matter of the meeting. The provisions of the Act are mandatory and are to be liberally construed in favor of open government.

Predating the Act is the common-law rule that decisions entrusted to governmental bodies must be made by the body as a whole at a properly called meeting. This requirement gives each member of the body an opportunity to state his or her views to other board members and to give them the benefit of his or her judgment, so that the decision “may be the composite judgment of the body as a whole.”

The stakes are high for local public officials. Texas courts have ruled that in certain cases, a local public official can be convicted of participating in an illegal closed meeting even though the official may have believed at the time that the closed meeting was authorized. Local public officials can also face criminal penalties if they attempt to avoid open meetings requirements by meeting in numbers less than a quorum for the purpose of secret deliberations about public business.

When does the Open Meetings Act generally apply?

The Act generally applies when a quorum of a governmental body is present and discusses public business. The mere presence of a quorum may in some instances invoke the Act. However, it does not apply to purely social gatherings of the governmental body that are unrelated to the body's public business, nor does it apply when public officials attend regional, state, or national conventions or workshops, as long as no formal actions are taken and the discussion of public business is only incidental to the event.

What constitutes a quorum for purposes of the Act?

The authority vested in a governmental body may be exercised only at a meeting of a quorum of its members. The Act defines "quorum" as a majority of the governing body, unless otherwise defined by applicable law. A board member may not delegate his or her authority to deliberate or vote to another person, absent express statutory authority to do so.

Meetings of Less than a Quorum in Attempt to Evade the Act: "Walking Quorums"

On occasion, a governmental body has tried to avoid complying with the Act by deliberating about public business without a quorum being physically present in one place and claiming that this was not a "meeting" within the Act. Conducting secret deliberations and voting over the telephone, when no statute authorized this, was one such method.

A member of a governing body commits a crime if that official conspires to circumvent the Act by meeting in numbers of less than a quorum for the purpose of secret deliberations in violation of the Act. A violation of this sort is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months in jail, or both.

A gathering of less than a quorum of the governing body is not generally subject to the Act. However, if a standing committee or subgroup of the governmental body

Meeting Notice

The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting.

The posted notice of an open meeting must contain the date, hour, and place of the meeting and a description of each subject to be discussed at the meeting.

Descriptions such as “old business,” “new business,” “other business,” “personnel,” and “litigation matters” are usually not sufficiently detailed to meet the requirements of the Act.

Finally, a local unit must be sure that its postings are not misleading. For example, a Texas court has ruled that a notice calling for “discussion” of a certain item was not sufficient to allow a board to take action on that item when the board’s previous notices had always explicitly stated when an action might be taken.

A governing body may not change the date, time, or location of its meeting without posting a corrected notice for 72 hours.

A governmental body that recesses an open meeting to the following regular business day need not post notice of the continued meeting if the action is taken in good faith and not to circumvent the Act. If a meeting continued to the following regular business day is then continued to another day, the governmental body must give notice of the meeting’s continuance to the other day.

meets and the discussion of public business occurs, it is advisable that such gatherings should also be posted and conducted as open meetings. State law also provides that if less than a quorum of the governing body gathers with the intent of circumventing the Act, criminal penalties can be imposed against the participating officials. In other words, if members are holding their discussion of public business in numbers less than a quorum in order to avoid having to meet the requirements of the Act, criminal prosecution can be pursued.

May less than a quorum of members of the governing body visit over the phone without violating the Act?

The mere fact that two members visit over the phone does not in itself constitute a violation of state law. However, if members are using individual telephone conversations to poll all the members on an issue or are making such telephone calls to conduct their deliberations about public business, there may be a potential criminal violation. Physical presence in one place is not necessary to violate the Act. It would remain a fact issue whether certain phone conversations between

less than a quorum of members would be a violation of the Act. Such interactions could amount to meeting in numbers less than a quorum to circumvent the Act.

What right does the public have to speak on a particular agenda item?

The Act allows the public to observe the open portion of a meeting. However, the Attorney General has concluded that the Act does not give members of the public a right to speak on items considered at an open meeting. Such a right only exists if a specific state law requires a public hearing on an item or if state law requires that public comment be allowed on an issue. If a local entity allows members of the public to speak on an item at a meeting, the governing body may adopt reasonable rules regulating the number of speakers on a particular subject and the length of time allowed for each presentation. However, the body must apply its rules equally to all members of the public.

What may members of a governing body do if an un-posted issue is raised at an open meeting?

Members of the governmental body may not deliberate or make any decision about an un-posted issue at a meeting of the governmental body. If an un-posted item is raised by members or the general public, the governing body has four options.

- First, an official may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue.
- Second, an official may direct the person making the inquiry to visit with staff about the issue.
- Third, the governing body may offer to place the item on the agenda for discussion at a future open meeting.
- Finally, the governing body may offer to post the matter as an emergency item if it meets the criteria for an emergency posting.

Keeping a Record of Open Meetings: Minute

A governing body must either keep minutes or make a tape recording of every open meeting. If the body chooses to keep minutes rather than make a tape, the Act requires that the minutes indicate the subject of each deliberation and indicate every action that is taken. The minutes or tape recording of an open meeting are open to the public and must be available for inspection and/or for copying. The local unit must permanently retain copies of its minutes of its meetings. However,

the unit is not required by state law to publicly post the minutes of an open meeting.

Executive Sessions

Under the Act, a governing body may generally hold an executive session for one or more of the following nine reasons:

- 1) consideration of specific personnel matters;
- 2) certain consultations with its attorney;
- 3) discussions about the value or transfer of real property;
- 4) discussions about security personnel or devices;
- 5) discussions about a prospective gift or donation to the city;
- 6) discussions by a governing body of potential items on tests that the governing body conducts for purposes of licensing individuals to engage in an activity;
- 7) discussions of certain economic development matters;
- 8) discussions of certain competitive matters relating to a city-owned electric or gas utility for which the city council is the governing body; and
- 9) certain information relating to the subject of emergencies and disasters.

The rules for posting executive session items are the same as the general rules for posting issues that will be considered in open session. Most local units indicate on the posted agenda that the governmental body may be going into executive session on a particular topic and the statutory section that allows such an item to be considered in a closed meeting. However, the Act does not require the agenda to state which items will be discussed in closed session.

If a governing body chooses to discuss an item in executive session, it must follow the statutory procedures required for such sessions.

- The body must first convene in a properly posted open session.
- During that open session, the presiding officer must announce that a closed meeting will be held and identify the section or sections of the Act that authorize such a closed meeting.
- Once an executive session has begun, the presiding officer must announce the date and time the session started. At the end of that executive session, the presiding officer must again announce the date and time.

A tape recording or certified agenda must be made. Also, any action or vote on an agenda item may be taken only during an open session.

Executive Sessions Involving Medical or Psychiatric Records of Individuals

Under Sec.551.0785 of the Texas Government Code, a benefits appeals committee for a public self-funded health plan or a governmental body that administers a public insurance, health, or retirement plan may conduct an executive session to deliberate the medical records or psychiatric records of an individual applicant for a benefit from the plan; or a matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan.

Executive Sessions for Consultations with an Attorney

Section 551.071 of the Texas Government Code allows a governmental body to meet with its attorney to receive legal advice about pending or contemplated litigation or about settlement offers. The Attorney General has also concluded that a governmental body may meet with its attorney to receive legal advice on any matter. However, the Attorney General has warned that discussions in an executive session under consultations with an attorney must only relate to legal matters. The governing body may not discuss general policy matters that are unrelated to receiving legal advice from the attorney while in executive session under this exception.

A governing body may consult with its attorney in executive session to receive advice on legal issues raised by a proposed contract. However, the body may not discuss the merits of a proposed contract, financial considerations, or other non-legal matters related to the contract simply because its attorney is present. General discussion of policy unrelated to legal matters is not permitted in executive session under the Act merely because an attorney is present.

Executive Session to discuss the Acquisition of Real Estate

The Act allows a governmental body to hold an executive session to discuss the purchase, exchange, lease or value of real estate. However, such an executive session is only allowed if discussion of the real estate in an open meeting would have a detrimental effect on the ability of the governmental body to negotiate with a third party. For example, an executive session may in certain cases, be permitted to discuss that the local unit is willing to pay for real property that it plans to acquire. The unit should not use this exception when the other side for the transaction is present, as discussed below. There is no comparable authority for a governing body to go into an executive session to discuss the acquisition of items of personal property such as the purchase of a new computer system.

Public Information Act (Government Code Chapter 552)

Public information includes any information that is collected, assembled, or maintained by or for a governmental entity. The Public Information Act (hereinafter “The Act”) applies to records regardless of their format. It includes information that is maintained in paper, tape, microfilm, video, electronic data held in a computer memory, as well as other mediums specified under law

- The Act is only activated by a written request for information.
- The governmental body has a duty to respond to any written requests for open records including those that are made through e-mail or by fax
- An open records request only requires a governmental body to provide copies of documents that relate to the information sought by the requestor.
- The Public Information Act does not require a governmental body to calculate statistics, to perform legal research, or to prepare answers to questions.
- The Public Information Act allows governmental bodies to set a charge for providing copies of public information. The Attorney General’s Office has set a charge of 10 cents per page for making simple photocopies or printouts. A governmental body may not charge more than 25% above the charges set by the Attorney General’s Office without prior permission of the Attorney General’s Office.

Generally, there are only two permissible lines of inquiry that can be made of a requestor. First, the governmental body can ask a requestor for proper identification, but may not inquire into the motives or use that a requestor may have for public information that has been requested. This inquiry for proper identification should be done if needed, but if the information can be given without any identification, then the inquiry is not necessary. This identification requirement is generally imposed by a governmental body when a state statute limits who may gain access to certain information.

Second, a governmental body may ask the requestor for a clarification of what type of information is actually being requested. Often, an initial open records request may involve the production of more documents than the requestor intended. Similarly, many open records requests ask for information that is not kept by the governmental body in the requested format. In either case, the governmental body can ask the requestor whether a potential narrowing or variation of the request would meet the requestor’s need.

There is often a misconception that the Public Information Act requires that copies of public information must be produced within 10 business days of the written request to the governmental body for the record. However, the standard under the Act is actually that the governmental body must “promptly produce” the public information. Further, the Act states that all open records requests must be handled with good faith and must be accomplished within a reasonable time period.

If it will take a governmental body longer than 10 business days to provide the records, the governmental body must certify that fact in writing to the requestor. In the notice to the requestor, the governmental body must indicate a set date and hour within a reasonable time that the information will be available for inspection or duplication,

Withholding Requested Documents

A governmental body is required to ask the Attorney General for an open record ruling in almost all cases if the governmental body wants to withhold requested documents or information. The fact that a particular document request may arguably fall within one of the statutory exceptions to disclosure does not in itself eliminate the need to ask for an open records ruling. Unless, the governmental body can point to a previous determination that addresses the exact information that the governmental body now wants to withhold, the governmental body must request a ruling to withhold the information.

- A request for an Attorney General open records ruling must be made within 10 business days of the date the governmental body received the written request.
- Such a request can only be made by the governmental body.
- If the governmental body does not make such a request within the deadline, the information is presumed as a matter of law to be open to the public and the information must be released.
- The presumption of openness and the duty to release the information can only be overcome by a compelling reasoning that the information should not be released. A compelling reasoning may in certain cases involve a showing that the information is deemed confidential by some other source of law or that third-party interests are at stake.

The Attorney General has 45 working days from the date the request was received from the governmental body. However, if the Attorney General is unable to issue

the decision within the 45-day period, the Attorney General may extend the time to respond for an additional 10 working days.

Ethics under Texas Local Government Code

Texas Local Government Code--Chapter 171 Regulation of Conflicts Of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments

Section 171.001 DEFINITIONS In this chapter: (1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Section 171.002 SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Section 171.0025 APPLICATION OF CHAPTER TO MEMBER OF HIGHER EDUCATION AUTHORITY. This chapter does not apply to a board member of a higher education authority created under Chapter 53, Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

(1) a source of income to the board member; or

(2) a business entity in which the board member has an interest distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter 53, Education Code.

Section 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

(1) violates Section 171.004

(2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or

(3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

Section 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Section 171.005. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

- (1) the member has complied with this chapter; and
- (2) the matter in which the member is concerned has been resolved.

Section 171.006. EFFECT OF VIOLATION OF CHAPTER. The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Section 171.007. COMMON LAW PREEMPTED; CUMULATIVE OF MUNICIPAL PROVISIONS. (a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Section 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Section 171.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner that has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

- (1) the court over which the judge presides; or
- (2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

Texas Local Government Code—Chapter 176. Disclosure Of Certain Relationships With Local Government Officers; Providing Public Access To Certain Information

Section 176.001. DEFINITIONS In this chapter: (1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(1-c) "Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Section 573.024(b), Government Code.

(2-a) "Goods" means personal property.

(2-b) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a

member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity;

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity; or

(C) an employee of a local governmental entity with respect to whom the local governmental entity has, in accordance with Section 176.005, extended the requirements of Sections 176.003 and 176.004.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code.

Section 176.002. APPLICABILITY TO CERTAIN VENDORS AND OTHER PERSONS. (a) This chapter applies to a person who:

(1) enters or seeks to enter into a contract with a local governmental entity; or

(2) is an agent of a person described by Subdivision (1) in the person's business with a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee of an entity described by Subdivision (1), acting in the employee's official capacity.

Section 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED. (a) A local government officer shall file a conflicts disclosure statement with respect to a person described by Section 176.002(a) if:

(1) the person enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the person; and

(2) the person:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

(i) a contract described by Subdivision (1) has been executed; or

(ii) the local governmental entity is considering entering into a contract with the person; or

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract described by Subdivision (1) has been executed; or

(ii) the local governmental entity is considering entering into a contract with the person.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

- (1) given by a family member of the person accepting the gift;
- (2) a political contribution as defined by Title 15, Election Code; or
- (3) food, lodging, transportation, or entertainment accepted as a guest.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) A local government officer commits an offense if the officer knowingly violates this section. An offense under this subsection is a Class C misdemeanor.

(d) It is an exception to the application of Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation.

Section 176.004. CONTENTS OF DISCLOSURE STATEMENT.

The commission shall adopt the conflicts disclosure statement for local government officers. The conflicts disclosure statement must include:

- (1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Section 176.003(a), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a person described by Section 176.002(a) during the 12-month period described by Section 176.003(a)(2)(B) if the aggregate value of the gifts, excluding gifts described by Section 176.003(a-1), accepted by the officer or a family member from that person exceed \$250;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Section 176.003(a); and

(3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

Section 176.005. APPLICATION TO CERTAIN EMPLOYEES.

(a) The local governmental entity may extend the requirements of Sections 176.003 and 176.004 to any employee of the local governmental entity who has the authority to approve contracts on behalf of the local governmental entity, including a person designated as the representative of the local governmental entity for purposes of Chapter 271. The local governmental entity shall identify each employee made subject to Sections 176.003 and 176.004 under this subsection and shall provide a list of the identified employees on request to any person.

(b) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this section.

(c) An employee of a local governmental entity commits an offense if the employee knowingly violates requirements imposed under this section. An offense under this subsection is a Class C misdemeanor.

(d) It is an exception to the application of Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation.

Section 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE. (a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); or

(2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1).

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the person:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the person becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a); or

(B) that the person has given one or more gifts described by Subsection (a).

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a person's business relationships with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the person filing the questionnaire:

(1) describe each employment or business relationship the person has with each local government officer of the local governmental entity;

(2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the person filing the questionnaire;

(3) identify each employment or business relationship described by Subdivision (1) with respect to which the person filing the questionnaire receives, or is likely to receive, taxable income, other than investment income, that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity; and

(4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of 10 percent or more.

(d) A person described by Subsection (a) shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person is not required to file an updated completed questionnaire under Subsection (d)(1) in a year if the person has filed a questionnaire under Subsection (c) or (d)(2) on or after June 1, but before September 1, of that year.

(f) A person commits an offense if the person knowingly violates this section. An offense under this subsection is a Class C misdemeanor.

(g) It is an exception to the application of Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation.

(h) A local governmental entity does not have a duty to ensure that a person described by Section 176.002 files a conflict of interest questionnaire.

(i) The validity of a contract between a person described by Section 176.002 and a local governmental entity is not affected solely because the person fails to comply with this section.

Section 176.007. LIST OF GOVERNMENT OFFICERS. The records administrator for a local governmental entity shall maintain a list of local government officers of the entity and shall make that list available to the public and any person who may be required to file a questionnaire under Section 176.006.

Section 176.008. ELECTRONIC FILING. The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Section 176.009. POSTING ON INTERNET. (a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.

(b) This subsection applies only to a county with a population of 800,000 or more or a municipality with a population of 500,000 or more. A county or municipality

shall provide, on the Internet website maintained by the county or municipality, access to each report of political contributions and expenditures filed under Chapter 254, Election Code, by a member of the commissioners court of the county or the governing body of the municipality in relation to that office as soon as practicable after the officer files the report.

Section 176.010 REQUIREMENTS CUMULATIVE

The requirements of this chapter are in addition to any other disclosure required by law.

Section 176.011 MAINTENANCE OF RECORDS

A records administrator shall maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Section 176.012 APPLICATION OF PUBLIC INFORMATION LAW

This chapter does not require a local governmental entity to disclose any information that is accepted from disclosure by Chapter 552, Government Code.

Public Retirement Systems (Government Code Title 8)

Most of the laws governing public pension systems in Texas are found in Government Code Title 8. Particular attention should be paid to Government Code 802 Subchapter B because it contains the administrative and reporting requirements for your pension. Trustees should also review Government Code Chapter 804 regarding qualified domestic relations order. This manual includes Government Code 802 Subchapter B and Chapter 804 in their entirety.

Chapter 802 Subchapter B Studies and Reports

Section 802.101 ACTUARIAL VALUATION

(a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. The actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Section 802.1012 AUDITS OF ACTUARIAL VALUATIONS, STUDIES, AND REPORTS

(a) In this section, "governmental entity" means a unit of government that is the employer of active members of a public retirement system.

(b) Except as provided by Subsection (k), this section applies only to a public retirement system with total assets the book value of which, as of the last day of the preceding fiscal year, is at least \$100 million.

(c) Every five years, the actuarial valuations, studies, and reports of a public retirement system most recently prepared for the retirement system as required by Section 802.101 or other law under this title or under Title 109, Revised Statutes, must be audited by an independent actuary who:

(1) is engaged for the purpose of the audit by the governmental entity; and

(2) has the credentials required for an actuary under Section 802.101(d).

(d) Before beginning an audit under this section, the governmental entity and the independent actuary must agree in writing to maintain the confidentiality of any nonpublic information provided by the public retirement system for the audit.

(e) Before beginning an audit under this section, the independent actuary must meet with the manager of the pension fund for the public retirement system to discuss the appropriate assumptions to use in conducting the audit.

(f) Not later than the 30th day after completing the audit under Subsection (c), the independent actuary shall submit to the public retirement system for purposes of discussion and clarification a preliminary draft of the audit report that is substantially complete.

(g) The independent actuary shall:

- (1) discuss the preliminary draft of the audit report with the governing body of the public retirement system; and
- (2) request in writing that the retirement system, on or before the 30th day after the date of receiving the preliminary draft, submit to the independent actuary any response that the retirement system wants to accompany the final audit report.

(h) The independent actuary shall submit to the governmental entity the final audit report that includes the audit results and any response received from the public retirement system:

- (1) not earlier than the 31st day after the date on which the preliminary draft is submitted to the retirement system; and
- (2) not later than the 60th day after the date on which the preliminary draft is submitted to the retirement system.

(i) At the first regularly scheduled open meeting after receiving the final audit report, the governing body of the governmental entity shall:

- (1) include on the posted agenda for the meeting the presentation of the audit results;
- (2) present the final audit report and any response from the public retirement system; and
- (3) provide printed copies of the final audit report and the response from the public retirement system for individuals attending the meeting.

(j) The governmental entity shall:

- (1) maintain a copy of the final audit report at its main office for public inspection;
- (2) submit a copy of the final audit report to the public retirement system and the State Pension Review Board not later than the 30th day after the date the final audit report is received by the governmental entity; and
- (3) pay all costs associated with conducting the audit and preparing and distributing the report under this section.

(k) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

Section 802.1014 ACTUARIAL EXPERIENCE STUDY

(a) In this section, "actuarial experience study" means a study in which actuarial assumptions are reviewed in light of relevant experience factors, important trends, and economic projections with the purpose of determining whether actuarial assumptions require adjustment.

(b) Except as provided by Subsection (c), a public retirement system that conducts an actuarial experience study shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(c) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

Section 802.102 AUDIT

The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards. A general audit of a governmental entity, as defined by Section 802.1012, does not satisfy the requirement of this section.

Section 802.1024 CORRECTION OF ERRORS

(a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

- (1) the amount of the correction in overpayment or underpayment;
- (2) how the amount of the correction was calculated;
- (3) a brief explanation of the reason for the correction;
- (4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;
- (5) instructions for filing a written complaint; and

(6) a payment plan option if no future payments are due.

(a-2) Except as provided by this subsection and Section 802.1025, the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section 802.1025, not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

(1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the system discovers or discovered the overpayment;

(2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and

(3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025.

(c) Subsection (b) does not apply to an overpayment a reasonable person should know the person is not entitled to receive.

Section 802.1025 COMPLAINT PROCEDURE

(a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
 - (2) a brief explanation of the reason for the modification; and
 - (3) a payment plan option if no future payments are due.
- (c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section 802.1024 until:
- (1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or
 - (2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).
- (d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.
- (e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system; a person aggrieved by the decision may appeal the decision to an appropriate district court.

Section 802.103 ANNUAL FINANCIAL REPORT

- (a) Except as provided by Subsection (c), the governing body of a public retirement system shall publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report. The report must include the financial statements and schedules examined in the most recent audit performed as required by Section 802.102 and must include a statement of opinion by the certified public accountant as to whether or not the financial statements and schedules are presented fairly and in accordance with generally accepted accounting principles.
- (b) The governing body of a public retirement system shall, before the 211th day after the last day of the fiscal year under which the system operates, file with the

State Pension Review Board a copy of each annual financial report it makes as required by law.

(c) A public retirement system that is subject to Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes), and that has total assets with a book value, as of the last day of the fiscal year, of less than \$50,000, may submit to the State Pension Review Board for that year, instead of the financial report otherwise required by this section to be published and submitted, a copy of the financial report it submits to the firemen's pension commissioner.

(d) A general audit of a governmental entity, as defined by Section 802.1012, does not satisfy the requirement of this section.

Section 802.104 REPORT OF MEMBERS AND RETIREES

Each public retirement system annually shall, before the 211th day after the last day of the fiscal year under which the system operates, submit to the board a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

Section 802.105. REGISTRATION

(a) Each public retirement system shall, before the 91st day after the date of its creation, register with the State Pension Review Board.

(b) A registration form submitted to the board must include:

(1) the name, mailing address, and telephone number of the public retirement system;

A retirement system established under the Texas Local Fire Fighters Retirement Act is exempt from Subchapter C, Chapter 802, Government Code, except for Sections 802.205 and 802.207.

(2) the names and occupations of the chairman and other members of its governing body;

(3) a citation of the law under which the system was created;

(4) the beginning and ending dates of its fiscal year; and

(5) the name of the administrator of the system and the person's business mailing address and telephone number if different from those of the retirement system.

(c) A public retirement system shall notify the board of changes in information required under Subsection (b) before the 31st day after the day the change occurs.

Section 802.106. INFORMATION TO MEMBER OR ANNUITANT.

(a) When a person becomes a member of a public retirement system, the system shall provide the person:

- (1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system;
- (2) a summary of procedures for claiming or choosing the benefits available from the retirement system; and
- (3) a summary of the provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits may be based and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each

participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

(h) A public retirement system shall submit to the board copies of the summarized information required by Subsections (a) and (b) before the 31st day after the date of publication or the date a change is adopted; as appropriated.

Section 802.107. GENERAL PROVISIONS RELATING TO REPORTS.

(a) A public retirement system shall maintain for public review at its main office and at such other locations as the retirement system considers appropriate copies of the most recent edition of each type of report or other information required by this chapter to be submitted to the State Pension Review Board.

(b) Information required by this chapter to be submitted to the State Pension Review Board may be contained in one or more documents but must be submitted within the period provided by the provision requiring the information.

Chapter 802. Subchapter C. Administration Of Assets

Section 802.205. INVESTMENT CUSTODY ACCOUNT.

(a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a bank, depository trust company, or brokerage firm to serve as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated custodian to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of custodial services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

(d) If the governing body enters into a contract under Subsection (a) with a brokerage firm, the firm must:

- (1) be a broker-dealer registered with the Securities and Exchange Commission;

- (2) be a member of a national securities exchange;
 - (3) be a member of the Securities Investor Protection Corporation;
 - (4) be registered with the State Securities Board; and
 - (5) maintain net regulatory capital of at least \$200 million.
- (e) A brokerage firm contracted with for custodial services under this section may not have discretionary authority over the retirement system's assets in the firm's custody.
- (f) A brokerage firm that provides custodial services under Subsection (a) must provide insurance against errors, omissions, mysterious disappearance, or fraud in an amount equal to the amount of the assets the firm holds in custody.
- (g) A brokerage firm that provides consulting advice, custody of assets, or other services to a public retirement system under this chapter shall discharge its duties solely in the interest of the public retirement system in accordance with Section 802.203.

Section 802.207. CUSTODY AND USE OF FUNDS.

- (a) An investment manager other than a bank having a contract with a public retirement system under Section 802.204 may not be a custodian of any assets of the reserve fund of the system.
- (b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.

Domestic Relations Orders (Government Code Chapter 804)

In a divorce, a court may award a portion of a member's retirement benefits to a former spouse. A qualified domestic relations order (QDRO) is an order entered by the court in a divorce that directs the retirement system to make direct payment of a portion of a participant's benefits to his or her former spouse.

In Texas, public pension plan QDROs are governed by Government Code Chapter 804. For the QDRO provisions of Chapter 804 to apply, your board of trustees must elect to adopt the provisions of this subchapter and Subchapter C. An election under this section must be by order or resolution and need not set out the text of this subchapter or Subchapter C. A board of trustees may not elect to adopt only this subchapter or Subchapter C.

Subchapter A Qualified Domestic Relations Orders**Section 804.001. DEFINITIONS IN THIS CHAPTER:**

- (1) "Alternate payee" means a spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a public retirement system with respect to such member or retiree.
- (2) "Domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.
- (3) "Public retirement system" means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and any other continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision or of an agency or instrumentality of the state or a political subdivision and includes the optional retirement program governed by Chapter 830. Public retirement system does not include:
 - (A) a program, other than the optional retirement program, for which benefits are administered by a life insurance company;
 - (B) a program providing only workers' compensation benefits;
 - (C) a program administered by the federal government;
 - (D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986;
 - (E) a plan described by Subsection (d) of Section 401 of the Internal Revenue Code of 1986;
 - (F) a group or an individual account plan consisting of an annuity contract described by Subsection (b) of Section 403 of the Internal Revenue Code of 1986, other than a 403(b) contract or plan under the optional retirement program;
 - (G) an eligible state deferred compensation plan described by Subsection (b) of Section 457 of the Internal Revenue Code of 1986;or

(H) the program established by Chapter 615.

- (4) "Qualified domestic relations order" means a domestic relations order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to the alternate payee, and which meets the requirements of Section 804.003.
- (5) "Statewide retirement system" means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Teacher Retirement System of Texas, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

Section 804.002. APPLICATION OF CHAPTERS.

This subchapter and Subchapter C apply to each statewide retirement system and to the optional retirement program governed by Chapter 830. This subchapter and Subchapter C also apply to each other public retirement system for which the board of trustees of the system elects to adopt the provisions of this subchapter and Subchapter C. An election under this section must be by order or resolution and need not set out the text of this subchapter or Subchapter C. A board of trustees may not elect to adopt only this subchapter or Subchapter C.

Section 804.003. QUALIFIED DOMESTIC RELATIONS ORDERS.

(a) Sections 811.005, 821.005, 831.004, 836.004, 841.006, and 851.006 and any similar anti-alienation provisions contained in any other public retirement system shall apply to the creation, assignment, recognition, or enforcement of a right to any benefit payable with respect to a member or retiree of a public retirement system to which the section applies pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order.

(b) Except as provided in Subsection (d), the administrative head of a public retirement system to which this chapter applies and to which a domestic relations order is submitted or his designee has exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A determination by the administrative head or his designee under this section may be appealed only to the board of trustees of the public retirement system. An appeal to the board of trustees of a statewide retirement system is a contested case under Chapter 2001. However, the board of a statewide retirement system by rule may waive the requirement of an appeal to the board. On appeal of a decision made by the board

of trustees or by the administrative head if there is no appeal to the board under this section, the standard of review is by substantial evidence.

(c) Except as provided in Subsection (d), a court does not have jurisdiction over a public retirement system to which this chapter applies with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retiree under the public retirement system is created or established. A party to such an action who attempts to make a public retirement system a party to the action contrary to the provision of this subsection shall be liable to the public retirement system for its costs and attorney's fees.

(d) Under the optional retirement program, applicable carriers shall determine whether a domestic relations order is a qualified domestic relations order. If a dispute arises over the determination of whether a domestic relations order is a qualified domestic relations order which cannot be resolved by the procedure described in Subsection (g), the court which issued the order or which otherwise has jurisdiction over the matter shall resolve the dispute with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retiree under the optional retirement program is created or established.

(e) For the purposes of this section, benefits payable with respect to a member or retiree under the retirement system include the types of benefits payable by a public retirement system and a withdrawal of contributions from a public retirement system.

(f) A domestic relations order is a qualified domestic relations order only if such order:

- (1) clearly specifies the name, social security number, and last known mailing address, if any, of the member or retiree and the name, social security number, and mailing address of each alternate payee covered by the order;
- (2) clearly specifies the amount or percentage of the member's or retiree's benefits to be paid by a public retirement system to each such alternate payee or the manner in which such amount or percentage is to be determined;
- (3) clearly specifies the number of payments or the period to which such order applies;
- (4) clearly specifies that such order applies to a designated public retirement system;

- (5) does not require the public retirement system to provide any type or form of benefit or any option not otherwise provided under the plan;
 - (6) does not require the public retirement system to provide increased benefits determined on the basis of actuarial value;
 - (7) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and
 - (8) does not require the payment of benefits to an alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member required by law.
- (g) A public retirement system may reject a domestic relations order as a qualified domestic relations order unless the order:
- (1) provides for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age;
 - (2) does not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or annuitant's death;
 - (3) does not purport to require the selection of a particular benefit payment plan or option;
 - (4) provides clearly for each possible benefit distribution under plan provisions;
 - (5) does not require any action on the part of the retirement system contrary to its governing statutes or plan provision other than the direct payment of the benefit awarded to an alternate payee;
 - (6) does not make the award of an interest contingent on any condition other than those conditions resulting in the liability of a retirement system for payments under its plan provisions;
 - (7) does not purport to award any future benefit increases that are provided or required by the legislature; and
 - (8) provides for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the retiree or member are reduced by law.
- (h) The administrative head of a public retirement system to which this chapter applies or his designee (or applicable carrier, if under the optional retirement program), upon receipt of a certified copy of a domestic relations order, shall determine whether such order is a qualified domestic relations order and shall

notify the member or retiree and each alternate payee of such determination. If the order is determined to be a qualified domestic relations order, the public retirement system (or applicable carrier, if under the optional retirement program), shall pay benefits in accordance with the order. If the order is determined not to be a qualified domestic relations order, the member or retiree or any alternate payee named in the order may appeal the administrative head's determination in the manner specified in Subsection (b) or the optional retirement program carrier's determination in the manner specified in Subsection (d) and may petition the court which issued the order to amend the order so that it will be qualified. The court which issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the agency administrative head, his designee, the board of trustees, a court of competent jurisdiction, optional retirement program carrier, or otherwise, the public retirement system shall separately account for the amounts, in this section referred to as the "segregated amounts," which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(j) If a domestic relations order is determined to be a qualified domestic relations order, then the public retirement system (or applicable carrier, if under the optional retirement program) shall pay the segregated amounts without interest to the person or persons entitled thereto and shall thereafter pay benefits pursuant to the order.

(k) If a domestic relations order is determined not to be a qualified domestic relations order or if within 18 months of the date a domestic relations order is received by the public retirement system (or applicable carrier, if under the optional retirement program) the issue as to whether such order is a qualified domestic relations order is not resolved, then the public retirement system (or applicable carrier, if under the optional retirement program) shall pay the segregated amounts without interest and shall thereafter pay benefits to the person or persons who would have been entitled to such amounts if there had been no order. This subsection shall not be construed to limit or otherwise affect any liability, responsibility, or duty of a party with respect to any other party to the action out of which the order arose.

(l) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period shall be applied prospectively only.

(m) The public retirement system, the board of trustees, and officers and employees of the public retirement system (or applicable carrier, if under the optional retirement program) shall not be liable to any person for making payments of any benefits in accordance with a domestic relations order in a cause in which a member or a retiree was a party or for making payments in accordance with Subsection (k).

(n) The board of trustees of a public retirement system may promulgate rules it deems necessary to implement the provisions of this section.

(o) Except as specifically provided in this subtitle or by any other statute, public employment does not confer special privileges or immunities on a public employee. An ownership or beneficial interest in any retirement, pension, or other financial plan not included in the definition of "public retirement system" as set forth in Section 804.001 held in whole or in part by an officer or employee of the state or a political subdivision or of an agency or an instrumentality of either, whether obtained in connection with that employment or otherwise, shall be subject to the requirements of the federal laws governing qualified domestic relations orders.

Section 804.004. LIFE ANNUITY OR LUMP-SUM PAYMENT IN LIEU OF BENEFITS AWARDED BY A QUALIFIED DOMESTIC RELATIONS ORDER.

(a) The board of trustees of a public retirement system to which this chapter applies may by rule provide that, in lieu of paying an alternate beneficiary the interest awarded by a qualified domestic relations order, the system may pay the alternate beneficiary an amount that is the actuarial equivalent of such interest in the form of:

(1) an annuity payable in equal monthly installments for the life of the alternate payee; or

(2) a lump sum.

(b) The determination of whether to pay an amount authorized by this section in lieu of the interest awarded by the qualified domestic relations order shall be at the sole discretion of the public retirement system.

(c) If a public retirement system elects to pay the alternate payee pursuant to this section, the benefit payable by the system to the member, retiree, or beneficiary shall be reduced by the interest in the benefit awarded to the alternate payee by the qualified domestic relations order.

(d) If the public retirement system pays the alternate payee pursuant to this section, the retirement system shall be entitled to rely on a beneficiary designation

or benefit option selection made or changed pursuant to its plan without regard to any domestic relations order.

Section 804.005. PAYMENT IN CERTAIN CIRCUMSTANCES IN LIEU OF BENEFITS AWARDED BY QUALIFIED DOMESTIC RELATIONS ORDER.

- (1) This section applies only to the Employees Retirement System of Texas and the Teacher Retirement System of Texas.
- (2) A public retirement system to which this section applies shall pay an alternate payee of a member of the retirement system who is described by Subsection (c), if the alternate payee so elects and in lieu of the interest awarded by a qualified domestic relations order on or after January 1, 1985, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued retirement benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount becomes payable at the time the actuarial equivalent is determined, and the amount is payable in the form of an annuity payable in equal monthly installments for the life of the alternate payee.
- (3) A member whose benefits are subject to partial payment under this section is one who has not retired from the retirement system, has attained the greater of the age of 62 or normal retirement age and the service requirements for service retirement, and retains credit and contributions in the retirement system attributable to that service.
- (4) If an alternate payee elects to be paid under this section, the retirement system shall reduce the benefit payable by the system to the member or the member's beneficiary by the alternate payee's portion of the actuarial equivalent determined under Subsection (b).
- (5) In determining under Subsection (b) the actuarial equivalent of an accrued retirement benefit, the system shall consider the member's benefit as a normal age standard service retirement annuity, without regard to any optional annuity chosen or beneficiary designated by the member.
- (6) The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.
- (7) A public retirement system may adopt rules for administration of this section.

SUBCHAPTER B SPOUSAL CONSENT REQUIREMENTS

Section 804.051. AUTHORITY TO REQUIRE SPOUSAL CONSENT.

A public retirement system may adopt rules to require spousal consent for the selection of a service retirement annuity other than a joint and survivor annuity that pays benefits to the member's spouse on the death of the member or for the selection of a death benefits plan that pays benefits in the form of an annuity to a person other than the member's spouse on the death of the member.

SUBCHAPTER C TERMINATION OF INTEREST IN PUBLIC RETIREMENT SYSTEM

Section 804.101. TERMINATION OF INTEREST IN PUBLIC RETIREMENT SYSTEM.

The death of an alternate payee as defined in Section 804.001 or the death of a spouse of a member or retiree of a public retirement system to which this chapter applies shall terminate the interest of the alternate payee or spouse in that public retirement system. This section shall not affect an interest in a public retirement system accrued to an individual as a member of the public retirement system.

This description is only intended to be a summary of plan qualification requirements and IRS provisions applicable to your Fund. It does not address all plan qualification requirements or Code provisions applicable to plan qualification or administration. Please contact your tax and legal advisor when determining whether your plan satisfies these rules and requirements.

Note: For information regarding Prohibition on Investment in Iran, please see Texas Government Code Title 8, Chapters 806 and 807.

TLFFRA and the Internal Revenue Code

Each fund established under TLFFRA is a “qualified” plan under Section 401(a) of the Internal Revenue Code (the “Code”) in order to provide its membership with tax-deferred benefits. Accordingly, a TLFFRA fund must satisfy certain requirements set forth in the Code to maintain its qualified status and ensure that its members receive such benefits. Failure to satisfy these requirements in your plan document and in operation results in a plan qualification failure, which would require correction through the IRS and could result in penalties and adverse tax consequences to your membership.

Now, as a governmental retirement plan, a TLFFRA plan is not subject to all plan qualification requirements set forth in Code § 401(a) and related provisions that would otherwise be applicable to a retirement plan established by a non-governmental employer. (For example, a governmental plan is exempt from the minimum participation requirements for qualified plans or the top-heavy or non-discrimination rules under the Code.) In addition, a governmental plan is not subject to the Employee Retirement Income Security Act of 1974 (“ERISA”), however, ERISA fiduciary provisions are reflected in Texas state statutes.

Nevertheless, there are key plan qualification requirements under the Code that TLFFRA funds must comply with to ensure that its members enjoy the tax-deferred benefits of a qualified plan. These requirements must be set forth in the Fund’s plan documents if not already set forth in the TLFFRA statute. Some key Code requirements include:

§ 401(a) – Requirement for written plan document and for plan assets to be held in trust.

§ 401(a)(2) – Requirement that Plan assets must be used for the “exclusive benefit” of members and beneficiaries.

§ 401(a)(8) – Requirement that forfeitures may not be used to increase benefits that any employee would receive under the plan.

§ 401(a)(9) – Required Minimum Distributions – Currently, plan benefits must be distributed by the “required beginning date,” which is typically April 1st of the calendar year following the later of (1) the year in which the member turns 70-1/2 or (2) the year in which the employee retires. Detailed rules can apply to this requirement as well.

§ 401(a)(16) and § 415(b) – Annual plan benefits cannot exceed the limits set forth in Code Section § 415(b). (The limit is \$185,000 for 2008.indexed) The limitation on the annual benefit under a defined benefit plan under section 415(b)(1)(A) is increased from \$195,000 to \$200,000 for 2012.

§ 401(a)(17) – Annual Compensation limit in determining compensation for all plan purposes (including compensation for benefit formula purposes and contribution percentages). (This limit is \$230,000 for 2008.)

§ 401(a)(25) – Requirement that benefits under the plan are “definitely determinable” under the written terms of the plan. This requirement demands that actuarial assumptions be specified in the plan.

§ 401(a)(31) – Requirement that eligible amounts distributed from Plan must be available for a direct rollover to another tax-qualified plan or vehicle.

Other Special Rules and Requirements Applicable to TLFFRA Plans under the Internal Revenue Code

§ 72(t)(10) – Under § 72(t), a 10% tax penalty applies to plan distributions prior to age 55. Under § 72(t)(10), an “age 50” requirement is substituted for the “age 55” requirement for distributions from governmental plans to qualified public safety employees.

§ 402(l) – HELPS Act – provides eligible retired public safety officers with a \$3,000 exclusion from gross income from annual distributions from a retirement plan to pay for qualified health coverage on a pre-tax basis.

§ 414(d) – TLFFRA is a Governmental Plan

§ 414(h) – Pick-up contributions – allows mandatory employee deferrals to a governmental plan to be treated as employer contributions, thereby avoiding immediate taxation to employee.

Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act (USERRA), prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual’s membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

USERRA

Establishes the cumulative length of time that an individual may be absent from work for military duty and retain reemployment rights to five years (the previous law provided four years of active duty, plus an additional year if it was for the convenience of the Government).

There are important exceptions to the five-year limit, including initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency. USERRA clearly establishes that reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

Provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability; Service members convalescing from injuries received during service or training may have up to two years from the date of completion of service to return to their jobs or apply for reemployment.

TLFFRA Related Opinions and Case Law

In the administration of local fire fighters' retirement plans, often a board of trustees comes across a circumstance which may not be clear reading the statute. The department may request a formal Attorney General's Opinion. An Opinion of the Attorney General has the weight of statute and case law. The Attorney General's Office will contact various parties that may have information related to the request. A formal Attorney General's Opinion may take up to one-year to receive. Oftentimes, based on an Opinion, the statute may be changed the following session to clarify the Legislature's intent. Please contact your legal advisor when determining whether your plan operates under TLFFRA statutory guidelines

USERRA and Pensions

USERRA requires that returning service members who meet the law's eligibility criteria must be treated as if they had been continuously employed for pension purposes, regardless of the type of pension plan the employer has adopted. This applies to vesting (determining when the employee qualifies for a pension) and benefit computation (determining the amount of the employee's monthly pension check). USERRA applies to plans sponsored by more than one employer as well as single employer plans. USERRA also applies to pension plans established by State and local governments. Also, an employee who would have become eligible to participate in a pension plan during that individual's time in the service should, upon reemployment, be placed in the plan retroactive to the date of initial eligibility. **If the employer contribution is contingent on the employee's contribution, then the employee must make his or her contribution before the employer is obligated to make its contribution.**

Pension Case Law of Interest

Fiduciary Duty

The trustee must act solely in the interests of participants and beneficiaries, and not in the interests of the union or employer responsible for the trustee's appointment. The court stated, "an employee benefit fund trustee is a fiduciary whose duty to the trust beneficiaries must overcome any loyalty to the interest of the party that appointed him." *National Labor Relations Board v. Amax Coal Co.*, 453 U.S. 322, 101 S. Ct. 2789

Plaintiff LaRue alleged that the value of his account lost \$150,000 when the plan administrator failed to follow instructions. LaRue asserted that in 2001 and 2002 he directed his employer to make certain unspecified changes to his investment allocations. LaRue claimed that his employer failed to comply with his requests. It is unclear from the limited record whether the alleged \$150,000 injury represented the decline in value of the assets LaRue wanted to sell or whether it was the result of an increase in value for the assets he wanted to purchase. LaRue sued for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA). *LaRue v. DeWolff, Boberg and Associates, Inc.*, 128 S.Ct. 1020 (2008).

Socially Responsible Investing (SRI)

The trustee may consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even with the collateral benefits.

"An investment would be appropriate if it is expected to provide an investment return commensurate with available alternative investments having similar risks." Department of Labor Bulletin 94-1

Conflicts of Interest

In 2005 six former trustees of the \$4.8 billion City of San Diego Employees Retirement System (SDCERS) were charged with multiple felony counts for violating California's conflicts of interest law. The case is currently on appeal to the California Supreme Court and has attracted national attention.

At its heart, the case involves the question of whether trustees should be criminally liable for trying to serve a constructive role as plan fiduciaries, or whether they are responsible for underfunding the pension in exchange for a negotiated increase in

pension benefits. A related question is whether it matters that the trustees were acting in good faith consistent with the advice of counsel.

The San Diego SDCERS board is composed of thirteen trustees, including ex officio positions for the city manager, treasurer, and auditor. Other trustees are elected by the active membership or appointed by the city council. The defendant trustees in the case include the fire fighter union president, the president of the municipal employee union, the HR director, the city treasurer and an assistant auditor and comptroller. To the extent that each of these trustees wears several hats, this dynamic was built into the structure of the pension board, as is not uncommon. Criminal liability for trustees based on official public pension determinations, which are of general applicability to the entire plan, runs contrary to this objective.

Article 16, Section 17 of California's constitution provides that trustees shall discharge their duties solely in the interest of and for the exclusive purpose of providing benefits and "minimizing employer contributions". The obligation to minimize employer contributions is unusual language which some argue runs contrary to the traditional and well developed "exclusive benefit" rule.

Legal issues which have been raised in the case include the following questions:

- 1) Whether the defendants were required to consider the City's contribution relief proposal because of Constitutionally-required fiduciary duties?
- 2) Whether the doctrines of abrogation, dual capacity and preemption preclude this section 1090 prosecution where the City Charter required the defendants to serve on the SDCERS Board and necessarily make decisions affecting their own interests?
- 3) Whether the Government Code section 1091.5(a)(9) non-interest exception precludes this prosecution where the only arguable interest in the contract consisted of governmental pension benefits?

Not surprisingly, the Lexin case has attracted national attention and has prompted concerned California pension trustees to avoid participating in pension board decisions. Other California trustees have decided to vote on pension matters, but are putting lengthy disclosures of possible conflicts of interest into the record in hopes of insulating themselves from future prosecution. As reported in Pension and Investments, if allowed to stand, Lexin could make trustees second guess their investment decisions. For example, trustees in plans with 13th checks or variable COLA's could worry that decisions affecting returns could impact benefits or

contributions. At the end of the day, baked into the structure of public pension boards is the representation and involvement by the membership.

So far we are unable to find any reported criminal prosecutions brought against other public pension trustees for similar conduct. *Lexin v. Superior Court of San Diego County*, 65 Cal.Rptr. 3d 574 (Cal. App. 2007)

Time as a Police Recruit Held to Be Non-Hazardous Duty.

The Kentucky Retirement Systems consist of both hazardous and non-hazardous classifications. Hazardous classifications are generally reserved to public safety personnel. Recruits are not eligible for retirement plan membership. Some years later, a police officer tried to buy his recruit time as prior service. The System informed him that his service was hazardous service and could only be purchased at a higher contribution rate. The employee contended that no one else had ever had his recruit time so classified. The employee demanded that the time be reclassified but the System refused. The trial court and the Kentucky Court of Appeals both agreed that the officer was simply the victim of a clerical error that should have been corrected. Accordingly, the recruit time was determined to be non-hazardous. *Board of Trustees v. DASD*, ____S.W.3d____, 2007 WL 2811643 (Ky. App. 2007)

Court Declines to Entertain Correction of Minor Administrative Error.

A former New Jersey state employee had her pension benefit recalculated and reduced by \$15 per month. The error was caused by transmission of erroneous payroll data from the employer. The employee unsuccessfully challenged the recalculation in a full administrative, evidentiary proceeding which resulted in the recalculation being upheld. The employee then appealed. In a tersely worded opinion, the court affirmed the result finding that the claim was so insignificant and unfounded that it “did not deserve a written opinion.” *Tripolski v. State*, 2007 WL 2752267 (N.J. App. 2007)

A Member of the Police and Fireman’s Retirement System That Is Injured While Performing His Ordinary Duties Is Not Disqualified from Receiving Accidental Disability Retirement Benefits Based upon a Lack of a Traumatic Event.

A police officer was employed as a corrections officer and was injured when an inmate violently resisted being handcuffed. The police officer filed for accidental disability retirement benefits with the Board of Trustees (“Board”), but was only

granted ordinary disability benefits. The Board reasoned that this incident did not qualify as a traumatic event because it was to be expected in the ordinary course of his duties. To obtain accidental disability a police officer must prove that he is permanently disabled as a direct result of a traumatic event that is identifiable as to time and place; undesigned and unexpected; and caused by a circumstance external to the member. The Board found that subduing an inmate is part of the anticipated work of a corrections officer and was not unexpected or unintended; therefore the police officer could not satisfy the traumatic event standard. This Court held that the Board has misread the statute and that a member who is injured while performing his ordinary duties is not automatically disqualified from receiving accidental disability benefits. This court reasoned that the police officer did suffer a traumatic event because the occurrence was identifiable as to time and place; unexpected and undesigned; and not caused by a pre-existing condition of the police officer alone or in combination with the work effort. *Richardson v. Board of Trustees*, 927 A.2d 543 (N.J. 2007)

The Court Will Not Enforce an Illegal Contract Nor Will They Reward Illegal Performance Even Where the Contract Itself Does Not Call for Illegal Performance.

Public employee entered into two parallel contracts for the same public job. Her goal, and the goal of the city government, was to allow the employee to remain in the state pension system and at the same time become a full time employee at full pay for the Springfield Parking Authority (“SPA”). The relevant statute provides that individuals collecting benefits from a state or local retirement program may generally not be paid for services rendered to the state or locality. The court recognized that the SPA is technically separate from the city, and its employees do not participate in the pension plan. The parties attempted to provide pension benefits for a public employee whose job excluded such benefits, thus circumventing the statutory system. However, the court found that in her capacity as executive director of the SPA, the employee was clearly rendering a service to the city. The employee argued that even if she provided services to the city, she was allowed to accept limited post-retirement governmental employment. However the court held that a clear policy that an employee of a governmental unit in Massachusetts generally may not retire, receive a pension, accept employment elsewhere in the government, and, by combining her pension and her new compensation, make more money than if she had not retired. *Pellegrino v. Springfield Parking Authority*, 69 Mass.App.Ct. 94 (Mass.App.Ct. 2007).

Retired Fire Fighters and Police Officers Were Not Entitled to an Increase in Pension as a Result of Reclassification of Their Active-duty Counterparts

Sixty-two retired fire fighters and police officers claim that when their former employer, the City of Annapolis (“City”), reclassified the positions of their active-duty counterparts so that they would ultimately receive more compensation for the positions they currently held, it was required, under Annapolis City Code § 3.36.150A1 (“ACC”), to increase their pension payments in tandem. The Board refused to increase their pension payments and as a result, the officers filed a claim with the circuit court, which reversed the board’s decision. The court of appeals then held that the officers were not, under the city code, entitled to an increase in pension payments as a result of reclassification of their active-duty counterparts; city code provision stating that retirees' pensions would be increased by the same percentage as any increase in the pay scale for members of the same rank and years of service who were on active duty was in cost-of-living chapter of city code, and city had over the years consistently interpreted such provision as applicable only to cost of living adjustments. The court reasoned an administrative agency's interpretation and application of a statute which the agency administers should ordinarily be given considerable weight by reviewing courts, and held that the increase in the statute only applies to cost-of-living increases given to retiree’s counterparts, and therefore the retirees did not get an increase in pension benefits. *City of Annapolis v. Bowen*, 173 Md.App. 522 (Md. App. 2007)

Decision by Trustees to Adopt a Two-Tiered Rate Structure for Health Plan Benefits Was Not Found to Be an Abuse of Discretion Nor Does it Mean the Trustees Acted with Malicious or Improper Purpose.

Employer-Union Benefits Trust Fund (EUTF) was established to provide a single health plan delivery system for the state and county employees. EUTF Board developed a plan that would adopt a two-tier rate structure. Plaintiffs, state and county employees, brought suit alleging that the EUTF trustees breached their fiduciary duties of loyalty because their two-tier plan overcharges and unfairly discriminates against two-member families, that the state was vicariously liable for the actions of the trustees; and the state was directly liable for negligently training and advising the trustees. The court found that the health benefits were not solely for the employee beneficiaries, but was also to benefit the public employers in providing a cost-effective health benefit plan therefore the common law fiduciary duties do not apply. This court has held that an abuse of discretion occurs when the decision maker exceeds the bounds of reason or disregards rules of principles of law or practice to the substantial detriment of a party. The court held that the trustees could not treat every beneficiary equally and any chosen plan would not satisfy all beneficiaries, and in this situation the trustees did not abuse discretion. The court held that since there was no abuse of discretion, there was no breach of

fiduciary duty, there could not be any vicarious liability for the state because there was no breach, and finally there could be no liability for negligent training because there was no breach of duty. *Awakuni v. Awana*, 165 P.3d 1027 (Haw. 2007)

An Entitlement Does Not Exist Unless an Ordinance Provides That There must Be a Benefit Granted or That the Benefit must Be Denied, and in Order to Prove Age Discrimination the Challenger must Show That Age Was a Motivating Factor in the Decision Making Process.

Plaintiffs, members of the Teamsters Union, and two non-union management employees, retired and were not allowed to continue to receive health care benefits from the city's health plan after retirement. Plaintiffs claim that the failure to provide health insurance coverage for retirees deprives plaintiffs of an entitlement (a constitutionally-protected property interest) and discriminated against them based on their age. The court held that a legitimate claim of entitlement arises if it is created by existing rules or understandings that stem from an independent source such as state law, and only if the statute sets out conditions under which the benefit must be granted or when benefits must be denied. The court reviewed the municipal code and found that city shall extend coverage to retired employees insofar as and to the extent possible. The court interpreted this language to mean that the city has discretion as to whether it chooses to grant retirees health benefits, and denied their claim that there was an entitlement to health benefits because there was no language that required the benefits or prohibited them. The court next stated that the ADEA prohibits employers from discriminating against any individual with respect to compensation, terms, condition, or privileges of employment because of such individual's age. Liability depends upon whether the protected trait actually motivated the employer's decision to deny benefits. The court found that there is no evidence that age was a motivating factor in the city's decision and dismissed the plaintiffs' final claim. *Doyle v. City of Medford*, 2007 WL 2248161 (D. Ore. 2007)

Florida Appeals Court Requires City to Fund Terminated Plan

In 2002, the Town of Lake Park entered into an inter-local agreement with Palm Beach County transferring firefighting responsibility from the town to the county. As part of the agreement, the pension plan was terminated. The plan consisted of thirteen members. In connection with the termination of the plan, the pension board distributed plan assets in a lump sum to the membership. One fire fighter, who was eligible for retirement, was paid a lump sum of the full value of his accrued benefit. Three fire fighters, with ten or more years of service, received a

portion of their accrued benefit. The nine remaining fire fighters, with less than ten years of service, received no payment. The pension board demanded that the town pay \$600,000 to the plan, representing the cost of the unfunded benefits for the twelve fire fighters who received only partial or no benefits. The Town of Lake Park, Florida filed a complaint for declaratory judgment regarding its obligations to continue funding a terminated fire fighter pension plan. Had the plan not been terminated, it would have been able to continue receiving state premium taxes on an annual basis until the plan became fully funded.

The trial court, ruling for the Town, reasoned that during the existence of the plan, the town made all required contributions. The plan was managed by the board of trustees, who selected the method of lump sum distribution. The board followed the payment protocol set forth in the applicable statute. The termination statute provided for less than full payment to members, if the assets of the plan were inadequate to fully fund the plan. The statute created a priority for higher ranking categories of members, based on years of service. The court reasoned that if assets are exhausted by payment to higher ranking categories of membership, lower ranking members receive nothing. The court interpreted the statute to provide that a municipality has no obligation to continue funding a terminated plan under these circumstances.

On appeal, the Florida District Court of Appeals reversed finding that state law was unequivocal on the obligation of a city to fully fund its retirement plan. The Court noted that the lump sum distributions criticized by the trial court were a lawful alternative for the Board and did not provide a ground for the City to avoid its funding obligation. *Board of Trustees v. Town of Lake Park*, 966 So.2d 448 (Fla. 4th DCA 2007)

New York Court Denies Disability to Employee Unwilling to Undergo Outpatient Surgery.

An auto mechanic for a New York school district injured his foot in a duty-related accident. The employee's doctor advised that the condition could be resolved by a safe, common 10 minute procedure performed on an outpatient basis. The procedure had a success rate of over 80% and resulted in a worsened condition only in very rare occurrences. The Retirement Plan denied disability benefits on the basis of the employee's refusal to undergo the procedure (plantar fasciatus release). The employee countered with a doctor's report suggesting only a 50% chance of success. The New York appellate court upheld the system finding that what was presented was essentially a dispute as to medical evidence which the

System is authorized to resolve. *Beckley v. New York State and Local Retirement Systems*, 845 N.Y.S.2d 464 (N.Y. App. 2007)

Divorce Decree Voids Beneficiary Designation

A South Dakota college employee named her then husband as beneficiary of her state retirement benefits. Three years after commencing state employment the employee and her husband divorced. In the divorce decree it was held that each person retained their respective property. Several years thereafter, the employee remarried but did not change her beneficiary designation. Statements from the plan still listed the former husband as beneficiary. The employee died in 2006, more than 30 years after her divorce while still married to her second husband of 25 years. The second husband filed suit seeking to have himself declared the beneficiary of the retirement benefits. The trial court held that the divorce decree had the effect of voiding the beneficiary designation. The first husband claimed that the law, to the extent it permitted the cancellation of the designation violated his constitutional property rights. This was also rejected by the trial court. On appeal to the Supreme Court of South Dakota, the court held that the trial court correctly interpreted the law. The state probate code clearly held that the divorce had the effect of voiding any marital-based benefit. To the extent it arguably interfered with the first husband's contractual rights, the Supreme Court held it was nonetheless justified as upholding the uniformity of state probate statutes. *Bucholtz v. Storsve*, 740 N.W.2d 107 (S.D. 2007)

Divorce Court Lacks Authority to Require Pension Payments Prior to Retirement.

An Arizona state employee was divorced prior to eligibility for normal retirement. The employee was eligible for an actuarially-reduced early retirement. The non-employee spouse asked for and received a monthly payment beginning at the date the employee was eligible for early retirement. On appeal, the Arizona Court of Appeals held that the trial court lacked the authority to order the husband to pay retirement benefits at a time when he was not actually eligible for his full retirement benefit. Noting that there was a need to balance the interest of the non-employee spouse in the receipt of marital rights from the retirement plan and the right of the employee to continue working beyond retirement age, the court held that only when the pension became an absolute and unconditional right of payment did this balancing test become enforceable. Accordingly the interim payments by the husband were set aside. *Boncoskey v. Boncoskey*, 167 P.3d 705 (Ariz. App. Div. 1 2007)

Collective Bargaining Agreement Requires Increase in Employer Contribution.

As the result of a labor agreement, the City of Toledo agreed to begin picking up the employee contribution to the retirement plan until the full amount was being paid by the City. During the term of the agreement, the State Retirement Plan raised the employee contribution from 8.5% to 10%. At the time the contract was formed, the contribution rate was 8.5% and the City claimed that was the limit of its responsibility. The Union filed a grievance under the CBA and the arbitrator held that the agreement was intended to provide for the City to pay the full cost of the employee contribution, regardless of the change in the statutory rate. On appeal, the Court of Appeals held that the arbitrator's decision, as a fair reading of the CBA, drawing its essence from the CBA, and as such, was entitled to judicial deference. The City was ordered to pay the higher rate. *City of Toledo v. AFSCME*, ___N.E.2d___, 2007 WL 2745277 (Ohio App. 2007)

Police and Firemen's Retirement System Was Equitably Estopped from Requiring Reimbursement of Retired Fire Chief's Benefits Because He Relied in Good Faith on Department's Pension Advice.

A fire chief retired and was re-hired the next day as the public safety director. The Board of Trustees required the fire chief to re-enroll in the Police and Firemen's Retirement System ("PFRS") and repay approximately \$450,000 that he received in pension benefits. Before the fire chief accepted the public safety director job he consulted with a secretary in the City's Public Safety Department. He received a "copy" of a letter from the Pension Board to another police officer who had retired and immediately thereafter accepted a public safety director position saying that he was able to retire and take the new position without jeopardizing his pension. The fire chief also consulted with a pension counselor, who was never identified, in the State Division of Pensions and Benefits to ensure that his acceptance of the new position would not interfere with his right to receive his Fire Department pension. The fire chief also consulted with the Administrative Secretary of the Board and he was further assured that the law had been rewritten such that the fire chief could take the job and his pension would not be affected. The court held that the fire chief reasonably exercised due diligence in consulting with the Division of Pensions before accepting his new administrative positions and that public employees should be able to rely on advice received from the Division of Pensions regarding receipt of pension benefits that may have enormous financial ramifications. *Hemsey v. Board of Trustees, Police & Firemen's Retirement System*, 925 A.2d 1 (N.J. Super. A.D. 2007)

Court Upholds Dismissal of Disability Application for Failure to Timely Complete.

An Illinois police officer, after 9 years of service, was terminated for inability to perform the duties of his occupation due to bi-lateral hearing loss. The employee sued the city for discrimination on the basis of physical disability. At the same time, the employee sought a “stay” of his disability retirement application. The Board declined the request. The employee cancelled his appointments with the Board appointed medical examiners. The Board ultimately granted a request of the employee to withdraw his application. When the employee sought to reinstate the application, the Board determined it no longer has jurisdiction because the applicant was no longer a police officer. The employee filed suit challenging the Board determination. In upholding the decision, the Illinois Court of Appeals reaffirmed earlier holdings that failure to pursue an application while still a “member” of the Plan warranted dismissal. Additionally, the failure of the applicant to timely pursue his application did not give rise to any ground for equitable relief. *Tucker v. Board of Trustees*, 876 N.E.2d 121 (Ill. App. 2007)

City Employee Convicted of Breaking and Entering Into City Hall Forfeits Pension.

The chief plumbing and gas inspector in Quincy, Massachusetts was convicted of breaking and entering into city hall and stealing documents from his personnel file. His object was removing documents criticizing his performance as the chief inspector of gas and plumbing to improve his chances of being reappointed by a recently-elected mayor. The forfeiture provision provided that an individual convicted of a violation of the laws applicable to his office or position forfeits their pension. The board of trustees concluded that there was clearly a link between the individual’s official duties and his criminal conviction. It determined that had he broken into a private residence he would not have forfeited his pension, however, but for the fact that he was a city employee, he would not have had cause to break into the personnel office and steal his personnel file. The court of appeal upheld the board’s determination holding that there were multiple direct links between the criminal offenses and the plaintiff’s position with the city. An intermediate appellate court had determined that employee could not raise a constitutional claim that the statute violated his 8th Amendment rights be free from excessive fines for the first time on appeal, as he did not raise the issue at the hearing before the board. The appeals court of Massachusetts determined that the intermediate appellate court had erred in holding that the claim could not be raised for the first time on appeal. The court held that because a pension board does not have any jurisdiction to hear constitutional claims, there was no need to raise the issue before the board and that the 8th Amendment claim could be raised for the first time on appeal. The

forfeiture order was therefore vacated and remanded back to the district court for further proceedings on the 8th Amendment constitutional claim. *Maheer v. Justices of the Quincy Division of the District Court Department*, 855 N.E.2d 1106 (Mass. 2007)

Portion of Disability Retirement Allowance Not Subject to Equitable Distribution in Divorce.

The parties in a divorce were unable to agree on the equitable distribution of the retirement plan member's accidental disability retirement allowance. The family court judge determined that the pension allowance was non-distributable income and did not award it as part of the equitable distribution of the estate. The wife appealed to the appellate court arguing that the disability pension allowance is subject to equitable distribution. The appellate court recognized that a disability retirement allowance has two components - one that represents a retirement allowance and is subject to equitable distribution to the extent attributable to marital efforts. The other component represents compensation for disability and belongs to the disabled spouse alone. The court noted that the accidental disability retirement allowance is based on a greater percentage of final salary than ordinary pension available to a member of the system. Because the excess percentage is best viewed as compensation for the disabling injury, that portion was reserved solely for the disabled spouse. *Sternesky v. Salcie-Sternesky*, 933 A.2d 956 (N.J. Super. A.D. 2007)

Board's Decision to Terminate Disability Retirement Benefits Overturned.

A disability retiree appealed a board order terminating his occupational disability retirement benefits. The individual had worked as a supervisor in the paint department of a school. He had suffered a back injury and was certified as disabled. He began receiving occupational disability retirement benefits in 1992. As part of an internal audit process, the system in 2004 requested medical and employment information from the retiree. In response, the retiree provided information on his medical condition and his employment at a private hospital including his earnings for the years 2002 through 2004. He had been employed at the hospital from 1996 to 2000 as a shuttle bus driver and thereafter as a security guard. Based on the information provided, the system discontinued his benefits effective in 2005. The system sent him a letter stating that the medical board had concluded that he was no longer incapacitated and notifying him that his disability benefits would be discontinued. He appealed his decision to the board of trustees. The system provisions provide that the board is authorized to discontinue benefits

if the retiree is no longer mentally or physically incapacitated for the performance of duty. He provided evidence at the hearing that he was unable to obtain a subsequent state job and that there was no available state jobs that he could perform. His supervisor testified that he was a good employee. There was no evidence put forth that there were any particular state jobs that he was capable of holding. The board decided to discontinue the disability retirement benefits. The disability retiree appealed the decision to the court of appeals in Texas. The court held that the board had abused its discretion, acted arbitrarily and capriciously, and reversed the decision of the board. As no evidence was presented that there were available jobs that the retiree could perform, the board failed to meet the standard which would have allowed them to discontinue the benefits. *Patton v. Employees' Retirement System of Texas*, 2007 WL 4462734 (Texas 12/19/07)

Federal Cases of Interest

Failure to Appeal Board Decision in State Court Bars Federal Action

A Michigan fire chief was divorced and an order was entered dividing his future pension benefits. Upon retirement, the chief selected two distinct three year periods to set his benefits, which had the effect of minimizing his former wife's benefits and maximizing his. The former wife filed a motion in the divorce proceeding to clarify the benefit calculation. The motion was denied following an administrative hearing. No appeal was taken of that decision to a state appeals court.

Instead, the former wife sued the City, the board of trustees and her former husband in federal court claiming denial of due process, breach of fiduciary duty, and violation of contract rights under the state constitution. The former wife also sued her ex-husband for intentional interference with her contract rights under the pension plan, claiming he used his influence as fire chief to persuade the pension board to act in an illegal manner.

The federal court dismissed the claims against the fund, the board and city based on the failure of the former wife to exercise her state court appeal rights. All of the rights at issue arose under state law and a failure to follow state law to vindicate these rights cannot give rise to a federal claim. Moreover, the fund would be exempt from damages actions in state court based on sovereign immunity. As to the individual claim against the fire chief, the court denied the motion to dismiss holding that there was at least a reasonable factual issue which could not be resolved at this early stage of the litigation, leaving the chief standing alone to continue the post-divorce battle with his former spouse. *Dziuban v. Board of*

Trustees, City of Saginaw Police Officers and Fire Fighters' Retirement System,
____ F.Supp.2d ____, 2008 WL 183556 (E.D. Mich 2008)

CHAPTER 3 - BOARD COMPOSITION AND RESPONSIBILITIES

New Member Transition

Every TLFFRA board knows that you have to diversify your assets to reduce volatility and risk. You need to have similar concerns when thinking about your board. The long-term reliance upon one or two members to keep your fund functioning is very risky. Do not allocate all of your system's institutional knowledge with one or two members.

There are fewer more important tasks for a TLFFRA board than helping a new board member get up to speed with the issues he or she will face as a trustee. Think of your board like you think of a diversified asset allocation. A new member may be a drag on returns in the short-term; however with proper training and guidance the new member will dividends in the long-term.

Educational Opportunities

The Texas Local Fire Fighters' Pension Conference

The Texas Local Fire Fighters' Pension Conference is held annually the third week of September. This conference is hosted by the Texas Local Fire Fighters' Pension Conference, a non-profit educational organization created to enhance the opportunities for education for trustees of TLFFRA systems. The 2013 conference will be hosted by the Lubbock Firemen's Relief and Retirement Fund, the 2014 conference will be hosted by the Lufkin Firemen's Relief and Retirement Fund, and the 2015 conference will be hosted by Laredo Firemen's Relief and Retirement Fund. These conferences provide credit toward voluntary (CFE) Continuing Fiduciary Education; see TEXPERS below for more information.

Texas Local Fire Fighters' Retirement Act (TLFFRA) PEER Review Trustee Training is an eight hour course held annually and hosted by the TLFFRA PEER Review Committee. Due to changes in legislation PEER Review Trustee Training will be determined at a later date. The course is specifically for trustees of TLFFRA systems covering topics such as legal issues, governance policy and administration. This course is taught by the TLFFRA PEER Review Committee, certified speakers in fields of actuarial, investments, etc. This training provides credit toward voluntary (CFE) Continuing Fiduciary Education; see TEXPERS below for more information.

The Texas Association of Public Employee Retirement Systems (TEXPERS)

TEXPERS is a statewide non-profit organization that enables trustees and administrators of public employee retirement systems to exchange ideas and information with others facing the same challenges. The association hosts two conferences annually with credits given for Continuing Fiduciary Education (CFE). www.texpers.org

Continuing Fiduciary Education (CFE) Program

The TEXPERS Board of Directors is responsible for formulating CFE policy and the TEXPERS staff shall administer the program accordingly.

CFE Credit Requirements

In order to obtain a Certificate of Completion each TEXPERS member participating in the program must take part in 15 hours of accredited CFE each reporting year (a calendar year). A minimum of two hours must be devoted to ethics or fiduciary responsibilities.

A participant whose system joins TEXPERS after the Annual Conference is required to take part in 10 hours of accredited CFE during the remainder of the year. Thereafter, the participant must fulfill the 15 required hours. The 15 hours can be achieved by attending all, or portions of: The TEXPERS Annual Conference; The TEXPERS Summer Educational Forum; and



TEXPERS CERTIFIED TRUSTEE TRAINING PROGRAM

MODULE A:

- Overview
 - Standards of Conduct
 - Who is a Fiduciary?
 - Fiduciary Duties
 - Prohibitions
 - Liability for Breach of Fiduciary Duty
 - Fiduciary Hot Topics
- Governance
 - Role of Board
 - Roles & Responsibilities
 - Role of Investment Consultant
 - Role of Specialty Consultant
 - Role of Actuary
 - Role of Custodian
 - Role of Legal Counsel
 - Prudent Decision-making
 - Process & Procedures
 - Strategic Planning
- Administrative Practices
 - Organizational Structure
 - Personnel Practices
 - Staffing & Training

MODULE B:

- Investment 101
- Investment Practices & Procedures
- Compliance Risk & Control
- Back Office Practices & Procedures
- Investment Accounting

MODULE C:

- Ethics Training
- Actuarial Matters
- Legal Matters

additional TEXPERS seminars throughout the year as approved by the Board.

TEXPERS also allows limited credit hours for certain educational events, as approved by the Board, such as from The Texas Local Fire Fighters' Pension Educational Conference and the TLFFRA PEER Review Trustee Trainings.

Completion of CFE Hours

An affidavit must be filed by the participant on or before 30 days has passed since the member participated in a CFE activity. The affidavit must be filed with the TEXPERS office reporting compliance with the CFE requirement. Affidavit forms must be completed in accordance to the form's instructions, which will be available at the CFE event. After a participant has completed the required 15 CFE hours in a calendar year, he/she will receive a Certificate of Completion. Upon completion of the required 10 hours, new members will also receive a Certificate of Completion. Each member is responsible for maintaining his/her own personal CFE record.

National Conference on Public Employee Retirement Systems (NCPERS)

NCPERS represents public fund members of over 500 pension funds across the United States. Their core mission is advocacy, research and education. They host a trustee education seminar in conjunction with an annual conference. www.ncpers.org

The International Foundation of Employee Benefit Plans (IFEBP)

The Certificate of Achievement in Public Plan Policy (CAPPP) program is a two-part series developed specifically for governing boards and policy/decision makers in public pension plans and public health plans. In depth topics include eight public policy areas such as governance, actuarial methods, investments and legal implications for pension funds. www.IFEBP.org

Other Training Opportunities:

- Pension Review Board www.prb.state.tx.us
- Texas Municipal Retirement System www.tmrts.org
- Texas County and District Retirement System www.tcdrs.org

TLFFRA **Section 19** is the statutory authority for your pension board and defines the membership of the board and the selection criteria for each position. Although you may have been elected or selected to fill a certain position on the board, you serve as a fiduciary to the members of the system. Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan and their beneficiaries.

TLFFRA **Section 20** directs the board of trustees to annually elect a chairman, vice-chairman, and secretary. Although TLFFRA provides for these officers, each board has discretion on the roles that each officer will play.

Board Officers

The Chairman is not responsible for the functioning of the organization but is responsible for the integrity of the board process.

Selection of the board chair should be based upon the ability to skillfully handle the group process. The chair should be able to lead the group fairly and firmly, to confront and even welcome its diversity, and adhere to agreed-upon rules for board conduct. Boards should take great care in choosing chairpersons who develop the leadership that often lies dormant in the group. The vice-chair is responsible to fill in for an absent chairperson.

The secretary is responsible for maintaining the integrity of the board's documents and should be compulsive about correctness, accuracy, and appearance.

The secretary is responsible for documenting the official record and actions taken by the board. The meeting minutes and adopted policy statements are the responsibility of the secretary. Detailed, narrative minutes (more than what the board has officially said) are unnecessary and detract from the board's "one voice," as well as loading the record with material of negligible official significance.

Board Committees

Most TLFFRA boards do not rely upon formal board committees in their decision making process; however board committees could assist the board in the decision making by doing pre-board work. If a board is to deliberate and adopt a policy

position, it will do a better job if several options are available. The availability of several alternatives, however, will not necessarily lead to an intelligent choice unless the board is aware of the implications of each option.

The committee's first task is to clarify just what the board-level issue is. Determining the appropriate question makes it possible to search for optional answers. The committee must be certain that it is addressing the correct issue, for it is not uncommon to spend prodigious time probing the wrong issues. The committee's product, then, consists of policy options and their implications.

There is no committee choice to rubber-stamp, nor does the board redo what the committee has already done. No recommendation is necessary. The committee may communicate its preferred option to the board, but it would be of little utility. In this process, the committee job and the board job are sequential and separate.

TLFFRA boards may also want to create a nominations committee to identify candidates to fill future board vacancies. The nominating committee does not exist to help the board create policy, but to replenish itself or its officers. This committee is part of the system that empowers individuals to serve as governors or officers. It is a proper governance committee and is the only board committee that may need to be described and empowered in the bylaws, particularly if it acts as membership committee, selecting nominees for the board.

Board Agendas

TLFFRA boards are required to meet monthly. Each meeting must be posted for at least 72 hours and the agenda clearly describe the business to be discussed. The requirements of the Open Meetings Act are discussed in the Open Government section of this manual and should be followed. This means that you follow the agenda and refrain from discussing items not posted on the agenda. In the transaction of formal business, the chair should follow Robert's Rules of Order to give everyone an opportunity to understand the action being taken, and if necessary, oppose or modify a motion. The Board secretary should clearly document each motion, second, and vote of any motion adopted by the Board.

Tying Agendas to the Long-Term

Boards must continually struggle with agenda content. At the beginning of each year after the new board members are sworn in, the board should meet and draft a tentative agenda for the year. The planning cycle may even be extended to cover a two-year period to include the biennial actuarial valuation of the system. In summary, the board begins to gain control over its agenda when it accepts total

responsibility for the agenda. Individual meeting agendas are derived from the larger picture.

Each year brings a flurry of activity to the TLFFRA board. New board members will take office in the first quarter of the year. Each new member will need to be sworn in, given ethics training, and provided a formal overview of the system.

In developing the annual meeting calendar, each board should first plan their fiscal year and the quarterly cycle of investment reporting. Your board should be formally reviewing investment reports quarterly. Financial quarters end on the last day of March, June, September, and December.

Before you set the meeting dates for the year, determine the delivery date of investment reports before you set the meeting date. Most investment managers and consultants will need 30-45 days to prepare and distribute performance reports to your board. If you schedule the meeting too early you may delay your board taking timely action or rebalancing.

If you plan on conducting an actuarial valuation, try to plan far enough ahead to have the results before the city fiscal year starts. Your annual contribution rates may be affected by results of the actuarial valuation and you will want to have enough time to support your case to the city.

Make sure that you and your actuary agree on the delivery date of your actuarial valuation report. You will need to wait until your financial report is complete because your actuarial firm will need the investment returns and administrative costs found in this annual report. If your financial report is due in March you should start the actuarial process in February. Resolve any contract issues before the release of your financial report so that the actuary can begin work. Your board might also want to formally adopt the actuarial assumptions and methods before any work begins.

Review the annual schedule of training events (such as PRB, TEXPERS, etc.) in order to include these as action items on your agenda with enough time to authorize the participation by interested members.

Board Agenda Planning Calendar

The following calendar is intended to give you a snapshot of the annual events that TLFFRA boards are involved in. You need to always coordinate with your administrators and contractors in setting your schedule. Be sure to meet as soon as possible after critical reports (investment reports, audits, actuarial valuations) are ready. This will reduce unneeded delay in taking appropriate action.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Investment												
Investment Performance Review and Rebalance		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Investment Policy Review			<input checked="" type="checkbox"/>									
Financial Report												
Contract Financial Audit		<input checked="" type="checkbox"/>										
Audited Financial Statement			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>								
Review and Adopt Audit					<input checked="" type="checkbox"/>							
Actuarial Valuation												
Contract Actuarial Valuation					<input checked="" type="checkbox"/>							
Adopt Actuarial Valuation Assumptions						<input checked="" type="checkbox"/>						
Conduct Actuarial Valuation							<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Review and Adopt Actuarial Valuation									<input checked="" type="checkbox"/>			
Board Election and Training												
Elect Trustees (by members)	<input checked="" type="checkbox"/>											<input checked="" type="checkbox"/>
Elect Public Member (by board) and Board Officers			<input checked="" type="checkbox"/>									
Training (TEXPERS)			<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>				
Training Peer Review and TLFFRA Conference				<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>			
Reporting												
Annual Report No longer due Feb												
PRB Reports Due Annually									<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
IRS 1099 Due and Data	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>									
Member Benefit Statements	<input checked="" type="checkbox"/>											

Board Criteria Checklist

Below are some suggestions for success factors, areas of importance, or areas of emphasis that may be considered when recruiting, transitioning and evaluating Board trustees:

- ☐ Consensus among Board members regarding the Board's role
- ☐ Common, shared vision among Board members regarding the direction of the fund
- ☐ "Appropriate" leadership exhibited during Board meetings
- ☐ Board members seek information, education, and training on topic pertinent to the Board or fund
- ☐ Thorough, up-to-date orientations are conducted for Board members
- ☐ Board understands and is mindful of its fiduciary duties
- ☐ Clear accountability is established
- ☐ Responsibilities are delegated appropriately
- ☐ Performance evaluations are conducted for the Administrative Staff and outside service providers
- ☐ Timely and accurate information is received by the Board
- ☐ Regular attendance at Board meeting is not an issue for any Board member
- ☐ Board members come to Board meetings prepared to meaningfully contribute to the discussion(s)
- ☐ Clear goals and objectives for the fund are established by the Board
- ☐ Board consciously allocates time to strategic thinking and planning
- ☐ Policies and procedures are consistently applied
- ☐ Advice and counsel is provided to Administrative staff
- ☐ Expectations of the Board are communicated clearly and in a single, unified voice
- ☐ Respect is given to Board members with differing views and opinions
- ☐ Understand the difference between governance and management

Robert's Rules Of Orders

<http://www.robertsrules.org/>

Boards have traditionally followed Robert's Rules of Order to provide common rules and procedures for deliberation and debate in order to place the whole membership on the same footing and speaking the same language. The conduct of ALL business is controlled by the general will of the whole membership - the right of the deliberate majority to decide.

Robert's Rules provides for constructive and democratic meetings, to help, not hinder, the business of the assembly. Under no circumstances should "undue strictness" be allowed to intimidate members or limit full participation. The fundamental right of deliberative assemblies requires all questions to be thoroughly discussed before taking action!

Motions

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership takes an action or a stand on an issue. Individual members can:

1. Call to order if Presiding Officer is not present.
2. Move or Second motions.
3. Debate motions.
4. Vote on motions.

There are four Basic Types of Motions:

1. Main Motions: The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. Subsidiary Motions: Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
3. Privileged Motions: Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. Incidental Motions: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How is Motions Presented?

1. Obtaining the floor
 - a. Wait until the last speaker has finished.
 - b. Rise and address the Chairman by saying, "Mr. Chairman, or Mr. President."
 - c. Wait until the Chairman recognizes you.
2. Make Your Motion
 - a. Speak in a clear and concise manner.
 - b. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
 - c. Avoid personalities and stay on your subject.
3. Wait for Someone to Second Your Motion
4. Another member will second your motion or the Chairman will call for a second.
5. If there is no second to your motion it is lost.
6. The Chairman States Your Motion
 - a. The Chairman will say, "it has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action.
 - b. The membership then either debates your motion, or may move directly to a vote.
 - c. Once your motion is presented to the membership by the chairman it becomes "assembly property", and cannot be changed by you without the consent of the members.
7. Expanding on Your Motion
 - a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
 - b. The mover is always allowed to speak first.
 - c. All comments and debate must be directed to the chairman.
 - d. Keep to the time limit for speaking that has been established.
 - e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.
8. Putting the Question to the Membership
 - a. The Chairman asks, "Are you ready to vote on the question?"
 - b. If there is no more discussion, a vote is taken.
 - c. On a motion to move the previous question may be adopted.

Voting on a Motion

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

1. By Voice -- The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
2. By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. By General Consent -- When a motion is not likely to be opposed, the Chairman says, "if there is no objection ...". The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
4. By Division -- This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
5. By Ballot -- Members write their vote on a slip of paper, this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to Table -- This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the membership.
2. Motion to Postpone Indefinitely -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

- Allow motions that are in order.
- Have members obtain the floor properly.
- Speak clearly and concisely.
- Obey the rules of debate. Most importantly, *BE COURTEOUS*.

Charts of Motions

CHART 1 WHAT DO I SAY?

Subsidiary Motions from Lowest to Highest Rank

TO DO THIS	MOTION	YOU SAY THIS	VOTE REQUIRED
Introduce Business	Main	"I move that..."	Majority
Change the Wording of a Motion	Amend	"I move to amend the motion by..." (adding words; striking out or substituting words)	Majority
Send to Committee	Commit	"I move that the motion be referred to..."	Majority
Postpone Action	Postpone Definitely	"I move that the motion be postponed to..."	Majority
Limit Debate	Limit Debate	"I move that the debate on this motion be limited to (one) speech of (two) minutes for each member."	Two-thirds
End Debate	Previous Question	"I move the previous question."	Two-thirds

Charts of Motions

CHART 2 WHAT DO I SAY?

Privileged Motions from Lowest to Highest Rank

TO DO THIS	MOTION	YOU SAY THIS	VOTE REQUIRED
Take Care of Noise or Temperature	Question of Privilege	"We cannot hear in the back of the room."	Chair Rules
Take Intermission	Recess	"I move that we recess for..."	Majority
Close Meeting	Adjourn	"I move that we adjourn."	Majority

Charts of Motions

CHART 3 **WHAT DO I SAY?**

Incidental or Unranked Motions

(In order when they apply to business on the floor)

TO DO THIS	MOTION	YOU SAY THIS	VOTE REQUIRED
To Enforce Rules	Point of Order	"I rise to a point of order."	Chair Rules
Protest Ruling of Chairman	Appeal	"I appeal the decision of the Chair."	Majority
Request Information	Point of Information	"I rise to a point of information."	Given by Chair/Authority
Request Parliamentary Help	Parliamentary Inquiry	"I rise to a parliamentary question."	Chair Rules
Demand a Verification of the Vote	Division	Call out, "Division!"	On Demand of One Member
To Separate Parts of a Motion	Division of a Question	"I move that the motion be divided."	Majority
To Remove an Improper Matter from the Floor	Object to Consideration	"I object to the consideration of..."	Two-thirds
To Withdraw a Motion I Made	Permission to Withdraw	"I request that my motion be withdrawn."	Majority

Charts of Motions

CHART 4 WHAT DO I SAY?

Restorative Motions or Motions That Bring a Question Back

TO DO THIS	MOTION	YOU SAY THIS	VOTE REQUIRED
To Change a Decision	Rescind	“I move to rescind the motion to...”	Two-thirds
To Bring Back a Motion for Revote	Reconsider*	“I move to reconsider the vote on...”	Majority

* Special Rules apply to this motion.

1. It must be made by someone who voted on the winning side.
2. It must be made **same day** or **next day** in a convention.

Executive Sessions By The Board

In a nutshell the Fire Pension Funds are not required to include a notice of Executive Session in every agenda posting. However, it is advisable. The Open Meetings Act, however, does not require the agenda to state which items will be discussed in closed session.

The following is recommended language:

Executive Session: Pursuant to Texas Government Code §§ 551.001, et seq. (Texas Open Meetings Act) to discuss any item on its open meeting agenda in accordance with the Texas Open Meetings Act (“Act”), including, without limitation, §§ 551.071-551.088 of the Act. Any final action, decision, or vote on a matter deliberated in a closed meeting will only be taken in an open meeting that is held in compliance with Texas Government Code, Chapter 551.

To conduct an Executive Session, the Board must:

- have a *quorum*
- properly *convene* in an open meeting;
- *announce* that a closed meeting will be held
- *identify* in the open meeting the section of the law that allows the closed meeting; and
- keep a *certified agenda* or a *tape recording* of the closed meeting.
 - a. The certified agenda must include *a statement of the subject of each deliberation* and *a record of any further action taken*
 - b. The certified agenda or tape recording is confidential and may not be released absent court action.
 - c. A *sitting member* of the Board may review the certified agenda or tap recording.

If there is a need for the Executive Session, the Chairman should announce that the Board will recess the regular meeting to convene an Executive Session – reading the above statement.

Sample Minutes of the Board meeting:

Chairman recessed the regular Board meeting at _____ o'clock __M to enter into Executive Session.

Executive Session: Pursuant to Texas Government Code §§ 551.001, et seq. (Texas Open Meetings Act) to discuss any item on its open meeting agenda in accordance with the Texas Open Meetings Act ("Act"), including, without limitation, §§ 551.071-551.088 of the Act. Any final action, decision, or vote on a matter deliberated in a closed meeting will only be taken in an open meeting that is held in compliance with Texas Government Code, Chapter 551.

Chairman reconvened the regular Board meeting at _____ o'clock __M.

If there is no need for an Executive Session, the Chairman may just announce that when the time comes. Example:

Mr. Chairman: There is no need for an Executive Session.

Board continues with the rest of the regular Board meeting.

SAMPLE CERTIFIED EXECUTIVE SESSION AGENDA

BOARD OF TRUSTEES

MAYBERRY FIREMEN'S RELIEF & RETIREMENT FUND

CITY OF MAYBERRY, TEXAS

CERTIFIED AGENDA - EXECUTIVE SESSION

Date of Meeting: _____

A. ANNOUNCEMENT OF PRESIDING OFFICER:

"The Board of Trustees of the Fire Pension Fund will begin its Executive Session on the ___ day of _____, 20__, at ___ o'clock ____m."

The subject matter of each Executive Session deliberation is as follows:

1.

Record of Further Action Taken:

2.

Record of Further Action Taken:

3.

Record of Further Action Taken:

B. ANNOUNCEMENT BY PRESIDING OFFICER:

C.

"The Board of Trustees has completed its Executive Session on the ___ day of _____, 20_ at ___ o'clock ____m."

D. CERTIFICATION:

I hereby certify that this Agenda of an Executive Session of the Board of Trustees of Mayberry Firemen's Relief & Retirement Fund of the City of Mayberry, Texas is a true and correct record of the proceedings pursuant to Tex. Gov't Code Ann. §551.103 (Vernon 1994).

Witness my hand this the ___ day of _____, 20__.

 CHAIRMAN

Board Policy Development

No one denies the importance of taking a long-term perspective in managing a TLFFRA pension system; however like any organization it is easy to spend your time putting out the fires in front of you. The task for most TLFFRA boards is made more complex because board members end up assuming day-to-day administrative responsibilities of running the pension system.

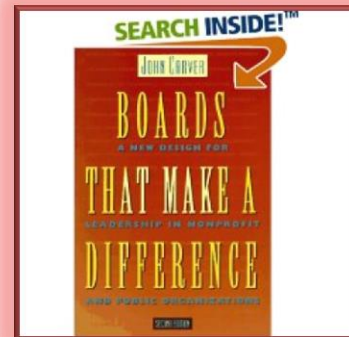
If you ask most trustees they will name the policies that they have adopted. The list will probably include:

- Administrative Policy
- Budget Policy
- Elections Policy
- Ethics Policy
- Travel Policy
- Written Investment Policy

The board's investment policy is a good example of a critical policy that is a living document. It should reflect the board's philosophy about risk and clearly identify asset allocations and performance benchmarks. Each board member needs to understand the investment policy and use it each quarter in the evaluation of manager performance and the overall performance of the fund.

A travel policy is an example of a policy that narrowly construed to control costs, can have negative consequences over the long-term. It is important to have administrative policies for handling routine expenses.

In adopting a travel policy a board should consider the legitimate reasons a board member may need to travel. The costs of traveling to educational conferences and training need to be weighed against the cost of not educating a board member. The expense of a due-diligence visit to evaluate



*Boards That Make a Difference:
A New Design for Leadership in
Nonprofit and Public
Organizations*
by [John Carver](#)

This is the book for you if you are interested in improving the ability of your board to meet long-term goals. The discussion on this page is from this book and TLFFRA trustees are encouraged to read this and other books that will help you effectively serve as fiduciaries.

a manager or consultant or buying real property may protect your fund from a bad investment.

Designing Policies That Make a Difference

TLFFRA boards need to think of themselves as policy boards and understand that board leadership is largely a policy task. A policy approach prevents a flurry of events from obscuring what is really important. The board policy making means first establish principles and formats to guide policy content.

- **Explicit** Policies must exist in written form. This is the only way all parties (including the policymakers) can know just what the policy is. It is the best way for the members to realize which policies should be questioned or changed. Two forces often make explicitness more difficult. First, as “everyone” understands this or that precept, it seems silly to dwell on actual language. It seems silly that is, until the writing begins and we discover our agreement was not as precise as we thought. Second, being explicit carries a danger similar to that of being proactive. It means laying one’s values on the table, exposing differences, and confronting them openly.
- **Current** Up-to-date policies are the only ones that work. When a board lives from its policies, the policies will either work or be changed. They will not then collect dust.
- **Literal** Policies must mean what they say.
- **Central availability.** When board pronouncements are all kept in one place, the task of determining what the organization represents becomes easier. Policies are virtually the only medium through which the board speaks, and thus should not be scattered about, discoverable only by scouring years of minutes and multiple staff documents.
- **Brevity.** Brevity may be the unheralded secret of excellence. Organizations seem to be impressed with complexity, however, brevity in policymaking confronts the need to look sophisticated (“It just *can’t* be that simple!”). Boards need to seek the compelling elegance of simplicity.

Policymaking, then, is proactive concerning the broadest issues, rather than reactive on issues of all sizes. Governing by policy means governing *out* of policy in the sense that no board activity takes place without reference to

policies. Most resolutions in board meetings will be motions to amend the policy structure in some way. Consequently, policy *development* is not an occasional board chore but its chief occupation.

From time to time, a board discovers that its values and perspectives have changed, that a previous statement was not fully cognizant of the range of options, or that the risks and opportunities in the external world have shifted. Even large shifts in board values can usually be accommodated more by altering existing language than by adding to it, thus changing the volume of policies very little. It is important that the collection of board policies not grow so large that it fails to remain a truly living document.

Service Providers And Vendor Relationships

Hiring a service provider in and of itself is a fiduciary function. When considering prospective service providers, provide each of them with complete and identical information about the plan and what services you are looking for so that you may make a meaningful comparison.

Some items a trustee needs to consider when selecting a service provider include:

- Information about the firm itself: financial condition and experience with retirement plans of similar size and complexity;
- Information about the quality of the firm's services: the identity, experience, and qualifications of professionals who will be handling the plan's account; any recent litigation or enforcement action that has been taken against the firm (ask for the full ADV); and the firms' experience or performance record;
- A description of business practices: how plan assets will be invested if the firm will manage plan investments or how participant investment decisions will be handled; the proposed fee structure; and whether the firm has fiduciary liability insurance.

The fund should establish and FOLLOW a formal review process at reasonable intervals to decide if it wants to continue using the current service providers or look for replacements. When monitoring service providers, actions to ensure they are performing the agreed-upon services include:

- Reviewing the service provider's performance

- Reading and comprehending any reports they provide
- Monitoring and reconciling actual fees charged
- Receiving continuing updates about policies and practices of the provider (i.e. trading, investment personnel turnover, proxy voting, soft money) and;
- Following up on participant inquiries or complaints

A system should document its selection and monitoring process and any actions the board takes on behalf of the service provider.

Vendor Relationships

When is a steak more than just a piece of meat? If your mother saw a report about you on the 5:00 o'clock news, about your role as a member of the board of trustees of your fire fighters' pension fund, would she be proud or disturbed??

The fund ethics policy and conflict of interest statement should outline the procedures and policies relating to the interactions with both potential and current vendors.

When in doubt, follow the words of the Godfather, "It's not personal, it's business."

Fees and Expenses

Fees are just one of several factors fiduciaries need to consider in deciding on service providers and plan investments. When the fees for services are paid out of plan assets, trustees will need to understand the fees and expenses charged and the services provided.

TLFFRA provides for fees for services to be paid for attorneys, actuaries and certified public accountants as well as for costs of investment managing and or consulting services. Currently, provisions for other payments from the system, excluding legal and medical fees, may not exceed:

1% of the market value of the assets of the fund for the first \$1 million in book value; and ¼ of 1 percent of the market value of the assets of the fund that exceeds \$1 million.

In comparing estimates from prospective service providers, ask which services are covered for the estimated fees and which are not. Some

providers offer a number of services for one fee, sometimes referred to as a “bundled” services arrangement. Others charge separately for individual services. Compare all services to be provided with the total cost for each provider. Consider whether the estimate includes services you did not specify or want.

Remember, all services have costs. The investment policy statement and contract should specify how all fees are paid.

Expenses are another area which should be closely monitored and accounted for. A board should have an annual budget for all expenses, including service provider fees, which should include expenditures such as board travel and training.

Section 25 of TLFFRA states that “a board...may pay from assets of the fund all costs reasonably and lawfully incurred by the retirement system and the costs of actual expenses incurred by board members in the performance of their duties on the board.”

These fees and expenses, like any other cost, are assets of the fund and should be closely monitored and scrutinized carefully. Again, this is not your money.

Questions the SEC Wants You to Ask

To encourage the disclosure and review of more and better information about potential conflicts of interest, the Department of Labor and the SEC have developed the following set of questions to assist plan fiduciaries in evaluating the objectivity of the recommendations provided, or to be provided, by a pension consultant.

1. Are you registered with the SEC or a state securities regulator as an investment adviser? If so, have you provided me with all the disclosures required under those laws (including Part II of Form ADV)?

You can check yourself — and view Part I of the firm’s Form ADV — by searching the SEC’s Investment Adviser Public Disclosure website. Your investment adviser must furnish you with a copy of Part II of Form ADV. At present, the IAPD database contains Forms ADV only for investment adviser firms that register electronically using the Investment Adviser Registration Depository. In the future, the

database will expand to encompass all registered investment advisers—individuals as well as firms—in every state. If you can't locate an investment adviser in IAPD, be sure to contact your state securities regulator or the SEC's Public Reference Branch.

2. Do you or a related company have relationships with money managers that you recommend, consider for recommendation, or otherwise mention to the plan for our consideration? If so, describe those relationships?

When pension consultants have alliances or financial or other relationships with money managers or other service providers, the potential for material conflicts of interest increases, depending on the extent of the relationships; Knowing what relationships, if any, your pension consultant has with money managers may help you assess the objectivity of the advice the consultant provides.

3. Do you or a related company receive any payments from money managers you recommend, consider for recommendation, or otherwise mention to the plan for our consideration? If so, what is the extent of these payments in relation to your other income (revenue)?

Payments from money managers to pension consultants could create material conflicts of interests. You may wish to assess the extent of potential conflicts.

4. Do you have any policies or procedures to address conflicts of interest or to prevent these payments or relationships from being considered when you provide advice to your clients?

Probing how the consultant addresses these potential conflicts may help you determine whether the consultant is right for your plan.

5. If you allow plans to pay your consulting fees using the plan's brokerage commissions, do you monitor the amount of commissions paid and alert plans when consulting fees have been paid in full? If not, how can a plan make sure it does not over-pay its consulting fees?

You may wish to avoid any payment arrangements that could cause the plan to pay more than it should in pension consultant fees.

6. If you allow plans to pay your consulting fees using the plan's brokerage commissions, what steps do you take to ensure that the plan receives best execution for its securities trades?

Where and how brokerage orders are executed can impact the overall costs of the transaction, including the price the plan pays for the securities it purchases.

7. Do you have any arrangements with broker-dealers under which you or a related company will benefit if money managers place trades for their clients with such broker-dealers?

As noted above, you may wish to explore the consultant's relationships with other service providers to weigh the extent of any potential conflicts of interest.

8. If you are hired, will you acknowledge in writing that you have a fiduciary obligation as an investment adviser to the plan while providing the consulting services we are seeking?

All investment advisers (whether registered with the SEC or not) owe their advisory clients a fiduciary duty. Among other things, this means that advisers must disclose to their clients information about material conflicts of interest.

9. Do you consider yourself a fiduciary under ERISA with respect to the recommendations you provide the plan?

If the consultant is a fiduciary under ERISA and receives fees from third parties as a result of their recommendations, a prohibited transaction under ERISA occurs unless the fees are used for the benefit of the plan (e.g., offset against the consulting fees charged the plan) or there is a relevant statutory or class exemption permitting the receipt of such fees.

10. What percentage of your plan clients utilize money managers, investment funds, brokerage services or other service providers from whom you receive fees?

The answer may help in evaluating the objectivity of the recommendations or the fiduciary status of the consultant under ERISA.

Actuarial Valuations

Your TLFFRA pension system is a defined benefit retirement plan in which the amount of the benefit is set by a formula established through your plan. Benefits are calculated based upon age, length of service, and final salary. The benefit is payable as a lifetime annuity and possibly for the lifetime of the designated beneficiary. The plan funds these benefits through a combination of employee contributions, employer contributions, and investment returns. There are no individual accounts.

Determining the life time cost of your plan is very complex and requires the skill of actuary. The most important role of the actuary is to figure what level of contributions, when combined with expected investment income, is needed over the long term. This is called the advanced funding schedule or schedule of contributions.

Board trustees must make an attempt to understand the actuarial process because they will ultimately be called upon to approve the actuarial valuation report. Plan design decisions (such as retirement age, benefit eligibility, and benefit formula) are based upon the findings of the actuary and the board must understand the process.

You will make decisions that will have multi-million dollar impact on your system based upon the advice of your actuary. Make sure you understand the process and make sure you are confident in your actuary and his/her work product.

Selection of Your Plan Actuary

Changing your plan actuary is very complex and needs to be approached cautiously. Although price is important, you should attempt to find the best value in the selection of your actuary.

Some boards rely upon a formal RFP process for selecting plan service providers while others rely upon an informal process. The statewide systems in Texas have either statutory or administrative requirements requiring the systems to issue requests for proposals for actuarial services.

Professional Designations of actuaries can vary, but generally will include some of the following:

- F.S.A. = Fellow of the Society of Actuaries
- A.S.A. = Associate of the Society of Actuaries

- E.A. = Enrolled Actuary (ERISA Practice)
- M.A.A.A. = Member of the American Academy of Actuaries
- Various Others
- Texas Government Code Section 802.101 requires an actuary you hire to be either FSA, MAAA, or EA

The actuary that you hire must meet the requirements of Government Code Sec. 802.101 and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

A good resource for locating actuaries is the American Society of Actuaries website at <http://www.actuary.org/>. They have a search engine that you can use to find actuaries to bid on your proposal. In your communications with prospective actuarial firms, be sure to clarify your expectations and the services you will need. Be sure to include:

- Description of your current plan design;
- Statutory Authority (TLFFRA)
- Latest Actuarial Valuation;
- Audited Financial Statement;
- A description of services required; and
- Expectations regarding delivery of reports and attendance at meetings.

This process is a good task for a committee of board. A committee of three members (with additional outside assistance from the city) could draft the RFP and develop the evaluation criteria for the board to review and adopt. The committee could be also charged with narrowing the field of candidates to two or three firms for board presentation.

Although you should be concern with the cost of the proposed services, you should attempt to find the best value for your fund. A low cost report may meet your statutory requirements but may not provide your board with the professional advice that you need to make long-term decisions.

Actuarial Process

You will need to complete several critical steps before you hire your actuary to conduct your actuarial valuation. Your annual financial report should be completed and investment returns calculated. Your membership data should also be prepared for use.

The actuarial valuation will take at least 90 days to complete and the board should clarify the schedule before work begins. It is a good idea for your board to formally adopt the major actuarial assumptions before any work begins. This will allow your board to discuss and learn about each assumption and take formal action. You do not want to be in a situation where you have to answer for a valuation based upon assumptions that you do not understand or do not approve.

What is the Pension “Actuarial Valuation Process”?

The “Actuarial Valuation Process” produces “Estimates of the Ultimate Cost” in order to measure plan liabilities and develop a rational approach to fund and account for the Ultimate Cost. It is a point-in-time estimate with projections of future results under various scenarios also possible. It includes

- Census Data
- Plan Provisions
- Methods and Assumptions
- Asset Information

Consider allowing your actuary to circulate a draft report prior to the board presentation. This will provide you time to review the report and possibly identify issues with the report before formal presentation and additional expense of binding the reports.

Give the actuary adequate time to present the report and be sure to cover in detail the impact of any assumption changes. Changes in assumptions make comparisons between one year and another much more difficult and must be considered in your evaluation.

Guidelines for Actuarial Soundness

1. The funding of a pension plan should reflect all plan liabilities and assets.
2. The allocation of the normal cost portion of contributions should be level as a percent of payroll over all generations of taxpayers.
3. Funding of the unfunded actuarial accrued liability should be level or declining as a percent of payroll over the amortization period.
4. Funding should be adequate to amortize the unfunded actuarial accrued liability over a period which should never exceed 40 years,

- with 25-30 years being a more preferable target. (ERS and TRS have 31-year amortization limits set in their statutes.)
5. The choice of assumptions should be realistic and reasonable in the aggregate.

Background Actuarial Information

Whenever an actuary calculates the long-term funding costs of a retirement system, certain assumptions are made as to the future of that plan. These assumptions represent the actuary's best projection of future plan experience, and are generally either economic or demographic. Economic assumptions include anticipated inflation ranges and performance of the fund's assets in the overall investment universe. Demographic assumptions tend to be more specific to the plan being evaluated, and are dependent on such factors as the age and life expectancy of plan members.

The assumptions that have the most significant impact on the statement of plan liabilities used by most actuaries include the rate of interest earnings on investments (the interest assumption), the rate of anticipated salary increases for plan members (the salary assumption), and the anticipated increase in the size of the covered payroll of the plan (the payroll assumption).

The actuarial assumptions are not considered independently of one another, and should be reasonable when considered as a group. For example, a very high salary increase assumption and a very low payroll growth assumption would be unlikely, since similar factors influence both numbers. The distance between the interest and salary increase rates assumed in valuation is called the spread.

Other assumptions include withdrawal rates for covered employees, mortality rates, expected ages at retirement, etc. The accuracy of any actuarial projection depends largely on how closely actual experience matches the assumptions made in the projection over the long term.

Asset Valuation Methods

Historically, actuaries have selected various methods to determine the actuarial value of pension plan assets for different measurement purposes.

Actuaries use both market value and asset valuation methods other than market value. The latter asset valuation methods are usually used for smoothing the effects of volatility in market value on plan costs or

contributions, or achieving consistency between the valuation of assets and obligations.

An asset valuation method that is intended to smooth the effects of market volatility typically reflects the market value of plan assets in some fashion. This is accomplished through a variety of commonly used techniques, such as the following:

1. smoothing some components of the return on market value or the difference between actual returns on market value and expected returns;
2. requiring that the actuarial value of assets fall within a specified range, such as 80% to 120%, of the market value; or
3. recognizing differences between the actuarial and market values of assets over a specified time schedule.

Actuaries often select different asset valuation methods for different purposes, such as for determining cash contribution requirements, determining employer accounting costs, or assessing the plan's funded status upon plan termination.

Asset valuation methods have been the subject of growing attention, influenced by regulatory trends and consideration of the concepts of financial economics. Actuaries who apply a financial economics approach generally advocate the use of market measurement of assets, while traditional actuarial practice includes both the use of market value and the use of a variety of asset valuation methods other than market value.

Economic Assumptions

Because no one knows what the future holds with respect to economic and other contingencies, the best an actuary can do is to use professional judgment to estimate possible future economic outcomes based on past experience and future expectations, and to select assumptions based upon that application of professional judgment. Therefore, an actuary's best-estimate assumption is generally represented by a *range* rather than one specific assumption. The actuary should determine the best-estimate range for each economic assumption, and select a specific point from within that range. In some instances, the actuary may present alternative results by selecting different points within the best-estimate range.

The types of economic assumptions used to measure obligations under a defined benefit pension plan may include the following:

- inflation;
- investment return (sometimes referred to as the *valuation interest rate*)
- discount rate;
- compensation scale; and
- other economic factors (e.g., Social Security, cost-of-living adjustments, growth of individual account balances, and variable conversion factors).

Pension Investments: A Guide For Trustees

The Basics

Written Investment Policy:

The Texas Local Fire Fighter's Retirement Act Section 27 states that, "A board of trustees established under this Act shall adopt formal investment policies that emphasize safety and diversity as well as liquidity for benefit payments." This written policy must be submitted to the fire fighter's pension commissioner no later than December 31 of each year.

State law adopted in 1993 requires all Texas public retirement systems to adopt a written investment policy. The law does not mandate the type or ratio of investments. The written investment policy must be available to the public for review, and a copy must be filed with the Pension Review Board within 90 days of adoption.

An investment policy should focus on the big picture, stating such things as asset allocation, types of allowable investments rather than specific investments, and other criteria such as standards of investment quality and rate of return objectives. If this is accomplished, the Trustees can refer to it as a living document, much like a "business plan". Key decisions during review on a quarterly or annual basis include review of long term objectives, risk tolerance, and diversification within the Asset Allocation. As a "test" a Trustee should be able to read investment policies and answer yes to the following questions:

1. Is the policy carefully designed to meet the real needs and objectives of the retirement plan?
2. Is the policy written so clearly and explicitly that a complete stranger could manage a portfolio and conform to the desired intentions?
3. Would the retirement fund have been able to sustain a commitment to the policies during the capital markets that have been actually experienced over the past ten, twenty, fifty, or even sixty years?
4. Would the investment managers have been able to maintain fidelity to the policy over the same periods?
5. Would the policy, if previously implemented, have achieved the objectives and results desired?

Asset Allocation

Asset Allocation is an investment strategy that aims to balance risk and reward by investing a portfolio's assets according to risk tolerance, investment time horizon and objectives according to the Written Investment Policy.

Why is Asset Allocation Important?

There are three main asset classes: equities, fixed-income, and cash or cash equivalents.

Historically, the returns of the three main asset classes have not moved up or down at the same time. Market conditions that cause one asset class to do well often cause another asset class to have average or poor returns. Investing in more than one asset class helps a portfolio's overall investment returns to have less volatility (fluctuations). This difference in the way asset classes moves is known as a low correlation.

Asset Classes

In addition to the main three asset classes, there are additional asset classes that could be included as acceptable within the Written Investment Policy Statement. Some of these are listed below:

- Domestic Equity
- International Equity
- Global Equity
- Emerging Markets
- Real Estate
- Timber
- Domestic Fixed Income
- International Fixed Income
- Global Fixed Income
- Emerging Markets: Debt
- Private Equity / Alternatives
- Hedge Funds

Equities (Stocks)

The investment in stocks, or equities, as the asset class defines them, means there is ownership of a part of the business. This entitles voting privileges at the shareholders' meeting and allows a pension fund to receive any profits

that the company allocates to its owners. These profits are referred to as dividends.

While bonds provide a steady stream of income, stocks are volatile. That is, they fluctuate in value on a daily basis, so when you buy a stock, you aren't guaranteed anything. Many stocks don't even pay dividends, in which case, the only way that you can make money is if the stock increases in value.

Compared to bonds, stocks provide relatively high potential returns. Of course, there is a price for this potential: the risk of losing some or all of the investment.

Bonds (Fixed Income)

Grouped under the general category called fixed income securities, the term bond is commonly used to refer to any securities that are founded on debt. When investing in a bond, it is lending out your money to a company or government. In return, they agree to pay interest on the investment and eventually pay you back the amount lent out. Unlike a variable-income security, where payments change based on some underlying measure such as short-term interest rates, the payments of a fixed-income security are known in advance.

An example of a fixed-income security would be a 5% fixed-rate government bond where a \$1,000 investment would result in an annual \$50 payment until maturity when the investor would receive the \$1,000 back. Generally, these types of assets offer a lower return on investment because they guarantee income.

Bond Ratings

A grade is given to bonds that indicate their credit quality. Private independent rating services such as Standard & Poor's, Moody's and Fitch provide these evaluations of a bond issuer's financial strength, or it's the ability to pay a bond's principal and interest in a timely fashion.

Bond ratings are expressed as letters ranging from 'AAA', which is the highest grade, to 'C' ("junk"), which is the lowest grade. Different rating services use the same letter grades, but use various combinations of upper- and lower-case letters to differentiate the ratings.

To illustrate the bond ratings and their meaning, we'll use the Standard & Poor's format:

AAA and AA: High credit-quality investment grade

AA and BBB: Medium credit-quality investment grade

BB, B, CCC, CC, C: Low credit-quality (non-investment grade), or "junk bonds"

D: Bonds in default for non-payment of principal and/or interest

Mutual Funds

A mutual fund is a collection of stocks and bonds. It is pooled money with a number of other investors, which enables them (as part of a group) to pay a professional manager to select specific securities. Mutual funds are all set up with a specific strategy in mind, and their distinct focus can be nearly anything: large cap stocks, mid cap stocks, bonds from governments, bonds from companies, stocks and bonds, stocks in certain industries,

Understand fees may be complicated, and the Trustees' fiduciary role does not change. Be sure that all requirements of the Written Investment Policy are also requirements found in any selected mutual funds' prospectus.

Alternative Investments

In addition to the two basic securities: equity and debt, better known as stocks and bonds, there are numerous alternative vehicles, which represent the most complicated types of securities and investing strategies.

These are generally high-risk securities that are much more speculative than plain old stocks and bonds. Yes, there is the opportunity for big profits, but they require some specialized knowledge. So if you don't understand what is being recommended, ask questions. Experts and professionals generally agree that new investors should focus on building a financial foundation before speculating with alternative investments. If your Investment Consultant is recommending adding this Asset Class, they may also provide an Asset/Liability study to explain all risks and rewards expected and how it may affect the plan actuarially.

What Does Market Capitalization Mean?

Frequently referred to as "market cap", this is the total dollar market value of all of a company's outstanding shares. Market capitalization is calculated by

multiplying a company's shares outstanding by the current market price of one share. The investment community uses this figure to determine a company's size, as opposed to sales or total asset figures.

For instance, if a company has 35 million shares outstanding, each with a market value of \$100, the company's market capitalization is \$3.5 billion (**35,000,000 x \$100 per share**).

Company size is a basic determinant of asset allocation and risk-return parameters for stocks and stock mutual funds. The term should not be confused with a company's "capitalization," which is a financial statement term that refers to the sum of a company's shareholders' equity plus long-term debt.

The stocks of large, medium and small companies are referred to as large-cap, mid-cap, and small-cap, respectively. Investment professionals differ on their exact definitions, but the current approximate categories of market capitalization are:

Large Cap: \$10 billion plus and include the companies with the largest market capitalization.

Mid Cap: \$2 billion to \$10 billion

Small Cap: Less than \$2 billion

Examples of Large Cap:

Large cap companies (\$10 billion +) are the big companies of the financial world. Examples include Wal-Mart, Microsoft and General Electric.

Keep in mind that the dollar amounts used for the classifications "large cap", "mid cap", or "small cap" are only approximations that change over time. Among market participants, their exact definitions can vary.

Examples of a Mid Cap:

Mid Cap companies (\$2 billion to \$10 billion) are the middle sized companies of the equity markets. Example includes Under Armour, Cabela's and Jack-In-the Box. Generally these companies are measured against the S & P 400 Benchmark.

Examples of a Small Cap:

Small Cap companies (under \$2 billion) are the small sized companies of the equity markets. Examples include (now) International Paper and US Steel.

Understanding Benchmarks:

A benchmark is an index, average, or other measure, the movement of which serves as a standard, or basis of comparison, for evaluating the performance of the overall market. Benchmarks are used as a gauge to set market expectations, and judge the performance of asset classes, market industries and sectors, and the performance portfolios.

Using benchmarks correctly:

One common mistake to avoid is measuring the performance of one asset class or subclass against the benchmark of another. For example, one year the Russell 2000 Index, the benchmark for small-cap stocks, may have gained 12% but large cap stock holdings gained an average of only 2%.

While the Russell 2000 can tell something about the overall performance of small-caps, it can tell very little about the performance of a portfolio in comparison to the rest of the large-cap market. Indeed, from one year to the next, large-cap and small-cap stocks can significantly outperform one another.

So, what is Dow Jones?

Dow Jones & Company is a subsidiary of News Corporation (NYSE: NWS, NWS.A; ASX: NWS, NWSLV; www.newscorp.com)

- leading provider of global business news and information services
- Its Consumer Media Group publishes
 - The Wall Street Journal, Barron's, Market Watch and the Far Eastern Economic Review
 - Its Enterprise Media Group includes Dow Jones Newswires, Factiva, Dow Jones Client Solutions, Dow Jones Indexes and Dow Jones Financial Information Services. Its Local Media Group operates community-based information franchises. Dow Jones owns 50% of Smart Money and 33% of Stoxx Ltd. and provides news content to radio stations in the U.S. Since 1882, the Dow Jones name has been synonymous with accuracy, integrity and trust

- Founded by Edward Davis Jones, Charles Henry Dow and Charles Milford Bergstresser, Dow Jones has been the benchmark by which other business- and financial-news organizations measure themselves

What is the Dow Jones Industrial Average (DJIA)?

Often referred to as "the Dow", the Dow Jones Industrial Average (symbol DJIA) is the oldest and most widely used indicator of the overall condition of the stock market. It is a price-weighted average of 30 actively traded stocks, primarily industrials. The 30 stocks are chosen by the editors of the Wall Street Journal (which is published by Dow Jones & Company), a practice that dates back to the beginning of the century. The Dow was officially started by Charles Dow in 1896, at which time it consisted of only 11 stocks. The Dow is computed using a price-weighted indexing system, rather than the more common market cap-weighted indexing system. Simply put, the editors at WSJ add up the prices of all the stocks and then divide by the number of stocks in the index. In actuality, the divisor is much higher today in order to account for stock splits that have occurred in the past.

The DJIA includes companies like General Electric, Disney, Exxon and Microsoft.

There are many other Dow Jones Indexes, the important point is read all Quarterly Investment reports and ask questions of your Investment Consultants.

What is Standard & Poor's 500 Index?

The S&P 500 is one of the most commonly used benchmarks for the overall U.S. stock market. The Dow Jones Industrial Average (DJIA) was at one time the most renowned index for U.S. equities, but because the DJIA contains only 30 companies, many agree that the S&P 500 is a better representation of the U.S. market. It is meant to reflect the risk/return characteristics of the large cap asset class. Companies included in the index are selected by the S&P Index Committee, a team of analysts and economists at Standard & Poor's. The S&P 500 is a market value weighted index - each stock's weight in the index is proportionate to its market value.

Other popular Standard & Poor's indexes include the S&P 400, an index of

mid-cap companies with market capitalizations of \$2 billion to \$10 billion, and the S&P 600, an index of small cap companies with market capitalizations between \$300 million and \$2 billion.

As with the Dow Jones Indices, there are several others, so read your quarterly investment reports, ask questions in review meetings, and document all reviews.

Bond Indexes and Benchmarks

- **Barclays Aggregate Bond Index:** A combination of several bond indexes, Barclays indexes are among the most widely used benchmarks of bond market total returns.
- **10-Year U.S. Treasury Bond:** The yield on this long-term U.S. government bond is often looked to as the standard bond yield for long-term bond investments.

Some Commonly Used Benchmarks:

To compare...

You might refer to...

Money Market Funds

- IBC's Money Fund Report Averages

Bond Funds

- Barclays Aggregate Bond Index
- Barclays Global Aggregate Bond Index
- 10-Year U.S. Treasury Bond

Equity Funds

- S&P 500 Index
- Russell 2000
- Russell 1000
- Nasdaq Index
- MSCI EAFE Index

Rebalancing

Rebalancing is bringing a portfolio back to an original asset allocation mix, or back within Target Allocation minimum and maximum percentages established in the Written Investment Policy. This is necessary because over time some investments may become out of alignment with Board established investment goals. Some investments will grow faster than others, some may have lost value. Rebalancing, helps ensure that a portfolio does not overemphasize one or more asset categories, and returns a portfolio to an intended level of risk and reward. These measures are important to not only the portfolio, but also to actuarial valuations.

For example, an asset allocation might be established to hold 60% in equities of your portfolio, but after a recent stock market increases, stock investments represent 80% of your portfolio. The Boards' annual calendar review with an Investment Consultant may show a need to either sell some of the equity holdings or purchase investments from an under-weighted asset class in order to bring the portfolio back to the targeted asset allocation mix.

There are basically three different ways to rebalance a portfolio:

1. Sell off investments from over-weighted asset categories and use the proceeds to purchase investments for under-weighted asset categories.
2. Purchase new investments for under-weighted asset categories.
3. If making continuous contributions to the portfolio, alter where these are allocated so that more investments go to under-weighted asset categories until the portfolio is back into balance.

Before rebalancing a portfolio, Trustees should consider whether the method of rebalancing used will trigger transaction fees or other (gains/losses) consequences. Contracted financial professionals can help identify ways to minimize these potential costs.

Fiduciary Training

What Duties under Texas Law?

Fiduciary Duty is the highest standard of Duty. TX Govt Code, 802.203.

Fiduciary Responsibility:

- (a) In making and supervising investments of the reserve fund of a public

retirement system, an investment manager **or the governing body** shall discharge its duties **solely** in the interest of the participants and beneficiaries:

- (1) for the **exclusive** purposes of:
 - (A) providing benefits to participants and their beneficiaries; and
 - (B) defraying reasonable expenses of administering the system;
- (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
- (3) By diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and
- (4) In accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

Duty to invest (802.202 (b))

...the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment

Duty of Loyalty

A fiduciary is required to discharge its duties solely in the interest of the participants and beneficiaries of the plan.

Duty to exercise reasonable care and skill (the prudent expert rule)

With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person **acting in a like capacity and familiar with matters of the type** would use in the conduct of an enterprise with a like character and like aims. (802.203(2))

Duty to Invest and Diversify

By diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. (802.203(3))

Duty to Collect Contributions

- collection and deposit of contributions to the trust. (IRC 501(a))
- Federal Income Tax Law requires:

“under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year of thereafter) used for, or diverted to, purposes *other than for the exclusive benefit of his employees or their beneficiaries.*” IRC 401(a)(2)

Duty to Administer

"Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system. (802.001(2))

When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body. 802.207(b)

Co-Fiduciary Case Law

A fiduciary may also be liable for the act of another fiduciary if:

- He or she knowingly participates in or conceals knowingly the act of another fiduciary that is a breach of fiduciary duty.
 “Knowing participation” liability on the part of co-trustees and third persons is well established under the common law of trusts.
- He or she has knowledge of a breach of fiduciary duty by another fiduciary and makes no reasonable attempt or effort to correct the breach.
- A fiduciary who becomes aware that a co-fiduciary had breached his fiduciary duty to plan beneficiaries may not escape liability by simply looking the other way, casting a blind eye toward the breach.

Some Situations Giving Rise to Liability:

- Lack of effective due diligence process
- No written guidelines or selection criteria
- No written contracts/poorly written contracts
- Unreasonableness of fees
- Failure to maintain documentation of process

- Failure to comply with Open Meetings/Open Records laws
- Failure to comply with documents that control the System
- Failure to understand the investment vehicle
- Failure to obtain necessary advice from experts
- Failure to monitor investments once made
- Periodic performance review
- Review of transaction costs, soft-dollar use, commission recapture, pay-for-play
- Establish and review proxy voting, corporate governance policies
- Changes in company or staffing
- Changes in investment style
- Conflicts of Interest

Prudent Investments

Under state law an investment course of action satisfies the prudence requirement if the fiduciary acts on the basis of factors to further the plan's objectives, taking into consideration the risk of loss and the likelihood of gain in a portfolio context.

Prudence in Investment: factors which further the plan's purpose

1. Composition of the portfolio with regard to diversification
2. Liquidity and current rates of return of the investments
3. Overall projected portfolio return in light of plan objectives

The Investment Policy

- You must prudently review what asset classes, both individually and as part of the group, are right for your plan's portfolio, how much to invest in each class, and with which managers to invest
- This is an on-going process

CHAPTER 4 - TLFFRA SYSTEM ADMINISTRATION

Custodial Banks

What is a Custodian Bank?

- ◆ An agent or organization responsible for:
- ◆ Safeguarding or safekeeping financial assets e.g. stocks, bonds, etc.
- ◆ Arranging the settlement of sales and purchases of such securities.
- ◆ Collecting information on the income from the assets.

Cash Management Services

Monthly Retiree Payroll

- Pension Benefit Amount
- Withholding Taxes
- Address and Bank Changes
- Qualified Domestic Relations Order Deductions
- Child Support Deductions
- HELPS Deductions (Healthcare Enhancement for Local Public Safety Retirees Act)

Employee Payroll

- Submit Employee Timesheet
- Issue Direct Deposit
- Withholding Taxes
- File Quarterly IRS Reports (941)
- Issue W-2's

Vendor Invoice Payments

- Set policy for approval limits
 - Invoices less than \$500
 - Invoices more than \$500

Tax Reporting

Year End

- File 1099R's to IRS

- Retirees
 - Terminated Firefighters
 - Lump Sum Distributions
 - Retro Drop Distributions
- File W2's to IRS
- Retirement System Employee(s)

Bank Statements

Report Availability

- Board Trustees
- Administrative Staff
- Legal Counsel
- Auditor
- Monthly / Yearly / Consolidated

Investment Portfolio

- Portfolio Holdings
 - Total Shares
 - Asset Tax Cost
 - Asset Market Value
- Investment Trading
 - Securities Sales
 - Securities Purchases

Transaction Detail

- Additions to Account
 - Investment Income Received
 - City Contributions
 - Firefighter Contributions
 -
- Withdrawals from Account
 - Retirement Distributions
 - Administrative Expenses
 - Other Expense Disbursements

Internal Controls

Transparency of Transactions

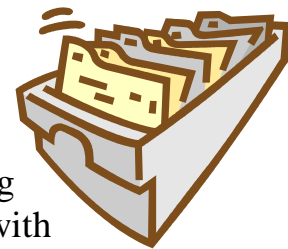
- Checks
- Invoices
- Fund Deposits
- Asset Liquidation
- Security Trading

Custodial Fees

- ◆ Market Value Of Account
- ◆ Administrative Service Fees
-

Records Retention

Records retention is part of an overall records management program that determines how long organizations should keep their records to comply with various legal requirements and operational needs, and what procedures should be followed to destroy them.



1. Active and Inactive Participant Records

Participant Personnel File – Contains

- Personnel form (formerly Form 100) showing date of entry into the Pension Plan; beneficiary information;
- Application for entry in DROP
- Application for Refund (Form 135);
- Appeal/Complaint (Form 700).
- QDRO, if applicable
- Any general correspondence relating to participant and the Fund.

Record Retention - Permanent

Record Location – Plan Administrator's Office

HR Personnel File

Summary employment history record for each participant maintained on one or more forms, containing minimum information such as name, sex, date of birth, social security number, positions held with dates of hire, promotion, transfer, or demotion, dates of leaves of absence or suspension that affect computation of length of service, wage or salary rate for each position held, including step or merit increases within grades, and date of separation.

Record Retention - Permanent

Notes: City's administrative computer system contains payroll information such as check history, deductions, accruals, benefit selection, hourly rate, and hours worked.

2. Retiree Records

Personnel File – Contains

- a) Personnel form (formerly Form 100) showing date of entry into the Pension Plan and beneficiary information.
- b) Worksheet showing calculation of benefit (service, disability, death or DROP).
- c) Application for Retirement Benefits (Form 400).
- d) Application of Disability Benefits (Form 200).
- e) Calculation for tax deduction from monthly benefit.
- f) Withholding Certificate for Pension or Annuity Payments (Form W-4P)
- g) Enrollment form for HELPS and City Medical insurance.
- h) Direct Deposit authorization (Retention until suspended).
- i) Appeal/Complaint (Form 700), if applicable.
- j) QDRO, if applicable.
- k) Copy of the Plan under which participant retired.
- l) In the event of the death of the retiree, surviving widow benefit calculation worksheet and/or dependent children benefit calculation worksheet would be in this file.
- m) Any general correspondence relating to Retiree or survivors.
- n) Copy of 1099's.

Record Retention - Permanent

Record Location - Plan Administrator's Office

3. Actuarial Valuations

Definition:

The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program. (*Reference Texas Gov't Code Section 802.101(a)*)

Record Retention – Permanent, or Follow the Dept of Insurance, retention which is fiscal year end plus 7 years.

Record Retention - Plan Administrator's Office.

Hard copy of the valuation is filed by year of the valuation.

4. Audits

Definition:

An examination of records or financial accounts to check their accuracy in which may also include an adjustment or correction of accounts. The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards. (*Reference Texas Gov't Code Section 802.102*)

Notes: Audit is performed annually.

Record Retention – Permanent

Record Location – Plan Administrator's Office

Documents – Working papers, summaries and similar records created for the purpose of conducting an audit.

Record Retention - 3 years after all questions arising from the audit have been resolved.

Record Location – Plan Administrator’s Office

5. Annual Reports

Definition:

Presentation of the Fund’s audited accounts for the preceding year. In addition to the auditor's report, an annual report commonly includes review of the operations of the Fund, balance sheet, income statement (profit and loss account), cash flow statement, and other supporting documents.

Record Retention - Permanent

Record Location - Plan Administrator’s Office

6. Bank Records

Reference Local Schedule GR (3rd edition) Records Management Publication; Texas State Library and Archive Commission Reference Section 1-1

Bank statements, canceled checks, check registers, deposit slips, debit and credit notices, reconciliations, notices of interest earned, etc.

Record Retention - Fiscal Year End + 5 years

Record Location - Plan Administrator’s Office

7. Administrative Records

Agendas

- a) Open meetings. Record Retention - 2 years
- b) Closed sessions. Record Retention - 2 years [By law - Government Code, Section 551.104(a).]

Minutes

- a) Written minutes. Record Retention - Permanent
- b) Notes taken during meetings from which written minutes are prepared.

Record Retention - 90 Days after approval of minutes by the governing body (Exempt from destruction request requirement).

Tapes (the use of the term audio tape includes videotapes with sound).

- a) Audio tapes of workshop sessions of governing bodies in which votes are not made and written minutes are not required by law to be taken. (Record Retention - 2 Years)
- b) Audio tapes of open meetings for which written minutes are prepared. Record Retention - 90 days after approval of minutes by the governing body (Exempt from destruction request requirement).
- c) Audio tapes of open meetings, except as described in (a) for which written minutes are not prepared. (Record Retention - Permanent)
- d) Audio tapes of closed meetings. Record Retention - 2 Years [By law - Government Code, Section 551.104(a)].
- e) Supporting documentation - One copy of each document of any type submitted to a meeting of a governing body for consideration, approval, or other action if such action is reflected in the minutes of the meeting. Record Retention - 2 Years.

Notes: Care should be exercised in the retention of documents submitted to the Board for action. Review before disposal, as some documentation may need to be retained permanently.

Open Meeting Notices

Record Retention - 2 Years

Oaths of Office

Record Retention - Until superseded + 5 years, or 5 years after leaving position for which oath required, whichever applicable.

Retention Location: Plan Administrator's Office.

8. Pension Plan Documents

Definition:

The plan document is the working document which explains in detail the provisions in the pension plan that is in conjunction with the statute. Details include: eligibility requirements -service benefits, disability benefits, death benefits, types and amounts of contributions such as Pick up Contributions and more.

Be knowledgeable of your plan document and any amendments, by periodically reviewing the plan provisions. It is imperative to understand your plan. Your plan can be disqualified under the Internal Revenue Code for failing to follow the terms of your plan.

Plan Retention – Permanent**Plan Location** - Plan Administrator's Office

Notes: The Plan under which the participant retirees is filed in the Retiree's personnel file.

9. General Records**Ordinance/Orders/Resolutions**

Documents which relate to the Firemen's Relief & Retirement Fund, originated by City Council

Record Retention - Permanent**Record Location** - Plan Administrator's Office.

Contracts, Leases, and Agreements - Contracts, leases, and agreements including reports, correspondence, and similar records relating to their negotiation, administrative, renewal, or termination.

Record Retention - 4 YEARS after the expiration or termination of the instrument according to its terms.

Correspondence and Internal Memoranda (includes incoming and copies of outgoing correspondence and internal correspondence and memoranda).

- (a) **Policy and program development** - Correspondence and internal memoranda pertaining to the formulation, planning, implementation, modification, or redefinition of the policies, programs, services, or projects of a local government. Record Retention - 5 years.

Retention Note: Review before disposal. Some correspondence of this type may merit permanent retention for historical reasons.

- b) **Administrative** - Correspondence and internal memoranda pertaining to or arising from the routine administration or operation of the policies, programs, services, and projects. Record Retention - 2 years.
- c) **Routine** - Correspondence and internal memoranda such as letters of transmittal, requests for publications, internal meeting notices, and similar routine matters. Record Retention - As long as

administratively valuable (Exempt from destruction request requirement).

Retention Note: Review before disposal. Some correspondence of this type may merit permanent retention for historical reasons.

Determination Letter - Determination Letter is a letter from the Internal Revenue Service that determines if a plan satisfies all qualified plan requirements. TLFFRA plans must operate their plans in compliance with 401 (a) requirements and the plan terms. The Determination Letter does not state whether a plan has been operating in accordance with qualified plan requirements.

TLFFRA plans must apply for a Determination Letter every five years and the next deadline is January 31, 2014.

Insurance Policies - Liability, theft, fire, health, life, automobile, and other policies, include supporting documentation relevant to the implementation, modification, renewal, or replacement of policies. Record Retention - 4 years after expiration or termination of the policy according to its terms

Legal Opinions - Legal opinions rendered by counsel or the Attorney General, including any written requests for opinions. Record Retention - PERMANENT

Policy and Procedure Documentation - Executive orders, directives, manuals, and similar documents that establish and define the policies, procedures, rules, and regulations governing the operations or activities of a local government as a whole or any of its departments, programs, services, or projects. Record Retention - Until superseded + 5 years

Retention Note: Review before disposal. Some documentation of this type may merit permanent or long-term retention for historical or legal reasons.

Publications - Pamphlets, reports, studies, proposals, and similar material printed by or for the Pension Fund. Pension Fund Plans could fall into this category. Record Retention - One copy of each, PERMANENT

Administrative Checklist

Ongoing Tasks	
Person	Task
	1) Process pension applications
	2) Interface with city finance department, custodial bank, and investment contractors
	3) Process personnel record
	4) Award benefits and report award to PRB
	5) Prepare mechanism for reviewing retirement scenarios with member
	6) Update PRB when plan description changes are approved
	7) Update PRB when the fund's investment policy changes
Monthly Tasks	
	1) Track benefit disbursements
	2) Reconcile investment trades
	3) Present cash flow report to board
	4) Track contributions for employed fund participants
	5) Post notice of monthly meeting
Quarterly Tasks	
	1) Report financial information quarterly to PRB
	2) Receive quarterly investment performance reports
Annual Tasks	
	1) Create and store snapshot of benefit disbursements for the fiscal year
	2) Create and store snapshot of contribution payments for the fiscal year
	3) All benefit disbursements (determinations) must be reported to PRB
	4) Send Membership Reconciliation Report annually to PRB
	5) Send Annual Report to PRB by February 28th
	6) Send Investment Policy to PRB by December 31st
	7) Send accepted audited financials to PRB 210 days after FYE
	8) Send accepted actuarial valuation to PRB every two years
	9) Report to participants (active and vested terminated) with benefit statements

Trustee for the Governing Entity of the Local Board of Trustees

☐ In accordance with the Texas Local Fire Fighters' Retirement Act (TLFFRA), "Section 19 (a) (1) "the mayor of the municipality, or the mayor's designated representative or the chief operating officer of the political subdivision or the chief operating officer's designated representative, as applicable;" is to serve as the trustee of the governing entity for the local board of trustees.

☐ In accordance with the Texas Local Fire Fighters' Retirement Act (TLFFRA), "Section 19 (a) (2) "the chief financial officer of the municipality or other political subdivision or, if there is no officer denominated as chief financial officer, the person who performs the duties of chief financial officer or a person designated by the chief financial officer or by the person performing the duties of chief financial officer;" is to serve as the trustee of the governing entity for the local board of trustees.

I, ☐ **Mayor** or ☐ **Chief Operating Officer** / ☐ **Chief Financial Officer** or ☐ **Person who performs duties of the Chief Financial Officer** ; hereby choose to ☐ accept or ☐ decline service as the trustee of the governing entity for the local board of trustees for the University Park Firemen's Relief and Retirement Fund (UPFRRF), ☐ effective this _____ day of _____, 20____. ☐ Therefore, I hereby appoint _____ as the ☐ **Mayor's designated representative** or ☐ **Chief Operating Officer's designated representative** / ☐ **Chief Financial Officer's designated representative** or ☐ **Person who performs duties of the Chief Financial Officer's designated representative**, who will serve as the trustee of the governing entity of the local board of trustees for the UPFRRF, effective this _____ day of _____, 20____.

By accepting to serve on the local board of trustees ☐ I or ☐ the designee will take on the fiduciary responsibility of the trustee of the governing entity for the local board of trustees for the UPFRRF and ☐ I or ☐ the designee will make every effort to receive any training necessary to perform the duties of trustee of the governing entity for the local board of trustees for the UPFRRF effectively; including attendance at monthly meetings as required under the Texas Local Fire Fighters' Retirement Act (TLFFRA).

☐ Mayor or ☐ Chief Operating Officer Signature: _____

Printed

Name _____

☐ Mayor's designated representative ☐ Chief Operating Officer's designated representative Signature: _____

Printed

Name _____

☐ Chief Financial Officer or ☐ Person who performs duties of the Chief Financial Officer Signature: _____

Printed

Name _____

☐ Chief Financial Officer's designated representative ☐ Person who performs duties of the Chief Financial Officer's designated representative Signature: _____

Printed

Name _____

Subscribed and sworn to before me, the undersigned authority on this the _____ day of _____, 20____

Notary Public, State of Texas

Web Links to Key Pension Laws and Related Information

The Texas Legislature convenes for regular sessions in January of odd-numbered years and can amend any of the statutes described in this Section. Make sure that you have the latest statute by visiting the State of Texas Legislature On-Line. <http://www.capitol.state.tx.us>

The Constitution <http://tlo2.tlc.state.tx.us/txconst/toc.htm>

Texas Revised Civil Statutes <http://tlo2.tlc.state.tx.us/statutes/cv.toc.htm>

Texas Government Code <http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>

Internal Revenue Code Section 401 Qualified pension, profit-sharing, and stock bonus plans

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000401---000-.html

Uniformed Services Employment and Reemployment Rights Act

http://www.dol.gov/vets/programs/userra/userra_fs.htm

State Agency Links The Fire Fighters' Pension Commission

<http://www.ffpc.state.tx.us>

Office of the Attorney General

<http://www.oag.state.tx.us>

Office of the Attorney General Open Government & Related Publications

http://www.oag.state.tx.us/open/publications_og.shtml

State Pension Review Board

<http://www.prb.state.tx.us>

State Office of Administrative Hearings

<http://www.soah.state.tx.us/>

CHAPTER 5 - TLFFRA TRUSTEE MANUAL GLOSSARY

Absolute Return

The percentage change in value of an asset or portfolio over a given period of time; the portfolios or assets absolute return can be compared with that of a benchmark to derive “relative return.” (See Benchmark, Relative Return and Total Return)

Absolute Return Strategy

An investment strategy that seeks to generate the highest possible absolute return within specified, often multiple, asset classes without construction limitations imposed when managing against a specific benchmark. By separating itself from a benchmark, an absolute-return strategy seeks to generate a positive return regardless of the positive or negative performance of relevant markers.

Active Return

The performance difference between a portfolio and a benchmark that is attributable to an investment manager’s decisions to construct a portfolio of securities that differs from the benchmark’s construction. For example, if a portfolio of securities selected by an investment manager returned 5% while the benchmark returned 3%, the portfolio’s “active return” is 2%. Active return is only possible when a manager takes on active risk.

Actuarial Accrued Liability

That portion, as determined by a particular Actuarial Cost Method, of the Actuarial Present Value of pension plan benefits and expenses which is not provided for by future Normal Costs.

Actuarial Assumptions

Assumptions as to the occurrence of future events affecting pension costs, such as: mortality, withdrawal, disablement, and retirement; changes in compensation and Social Security benefits; rates of investment earnings and asset appreciation or depreciation; and other relevant items.

Actuarial Cost Method

A procedure for determining the Actuarial Present Value of pension plan benefits and expenses and for developing an actuarially equivalent allocation of such value to time periods, in the form of a Normal Cost and an Actuarial Accrued Liability.

Actuarial Gain (Loss)

A measure of the difference between actual experience and that expected based upon a set of Actuarial Assumptions, during the period between two Actuarial Valuation dates, as determined in accordance with a particular Actuarial Cost Method. Actuarial Gains are due to favorable experience, e.g., the fund's assets earn more than projected, salaries do not increase as fast as assumed, members retire later than assumed, etc. Favorable experience means actual results produce actuarial liabilities not as large as projected by the Actuarial Assumptions. On the other hand, actuarial losses are the result of unfavorable experience, i.e., actual results that produce actuarial liabilities which are larger than projected. Actuarial gains will shorten the time required for funding of the actuarial balance sheet deficiency while actuarial losses will lengthen the Funding Period.

Actuarial Present Value

The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of Actuarial Assumptions.

Actuarial Soundness

A public retirement system is considered actuarially sound if an actuary determines that the fund has sufficient money to pay ongoing Normal Cost and amortize the Unfunded Actuarial Accrued Liability over a period of time not to exceed 40 years, preferably 25 to 30 years.

Actuarial Value of Plan Assets

The value of cash, investments and other property belonging to a pension plan, as used by the actuary for the purpose of an Actuarial Valuation

Actuarial Valuation

The determination, as of a valuation date, of the Normal Cost, Actuarial Accrued Liability, Actuarial Value of Assets, and related Actuarial Present Values for a pension plan

Actuarially Equivalent

Of equal Actuarial Present Value, determined as of a given date with each value based on the same set of Actuarial Assumptions

Actuary

A statistician versed in the collection and interpretation of numerical data whose profession it is to calculate for annuity values.

Agency Issues

Federally sponsored agencies are privately owned, publicly chartered entities that raise funds to provide credit to borrowers, such as farmers, homeowners, and students at a lower cost than would otherwise be available. Although there are no federal guarantees of most of these issues, the general market perceives that the government would "cover" any defaults on these issues, giving them virtually no credit risk.

Alpha

Alpha is a beta-adjusted measure of return. Positive alpha indicates that an investment portfolio has earned, on average, a premium above what is expected for the level of market variability (beta). A negative alpha indicates that the investment portfolio has received, on average, a premium lower than that expected for the level of market variability. (See Beta).

American Depositary Receipts

These are domestically traded securities representing claims to shares of foreign stocks. They provide a way for investors to take advantage of foreign investment opportunities without the risks associated with overseas markets.

Amortization Payment

That portion of the pension plan contribution which is designed to pay interest on and to amortize the Unfunded Actuarial Accrued Liability or the Unfunded Frozen Actuarial Accrued Liability.

Annual Pension Cost-

A measure of the periodic cost of an employer's participation in a defined benefit pension plan the employer's periodic required contributions to a defined benefit pension plan, calculated in accordance with the Parameters. A vehicle created to facilitate commercial trade transactions. They are called "bankers acceptances" because a bank accepts the responsibility to repay a loan to the holder of the vehicle created in a commercial transaction.

Basis point

One hundredth of one percentage point (0.01%).

Benchmark

A standard barometer against which investments can be measured in terms of performance, characteristics, construction and similar criteria; sometimes widely recognized instruments (e.g., US Treasuries) or interest rates (e.g., the US fed funds rate or LIBOR) serve as benchmarks. More commonly, a benchmark is composed of an unmanaged group of securities with the same general characteristics as the portfolio being measured against it. Stock indices such as the S&P 500 The FTSE 100 and the Nikkei 225 are commonly used for equities, while indices such as the Lehman Aggregate or the Nomura Bond Performance Index are commonly used in fixed income. (See Market Weight, Overweight and Underweight)

Beta

A measure of the expected change of a security's or portfolio's return relative to that of the market. By definition, the beta of a benchmark index is 1.00. A security with a beta of more than 1.00 tends to rise or fall more than the market; a security with a beta of less than 1.00 tends to rise or fall less.

Bond

A Security That Pays Interest. The Issuer Agrees To Pay The Bondholder A Regular Set Sum Based On The Amount Borrowed And The Bond's Coupon, And To Repay The Principal Amount Of The Loan At A Future Date. Many Variations Exist On This Basic Format, Including Bonds With No Coupon And With Variable Coupons; Bonds May Also Contain Call Or Put Provisions. The Price Of A Bond Is Quoted Assuming a par value of 100; thus, if a bond price is quotes as \$90 and principal value of the actual holding is \$1,000, that holding is valued at \$900. A bond selling above 100 is said to be trading at a premium; at 100, at par; and below 100, at a discount. The price varies over the life of the bond as interest rates, perceived credit quality and other factors fluctuate, and as the bond approaches its maturity date. A bond's price is inversely related to its yield: It rises when the bond's yield falls and declines when the yield rises.

Bonds Belong To The Fixed-Income Asset Class.

Book Value

An accounting term that defines the net value of an asset as it appears on a company's balance sheet; a company's book value is equal to its total assets minus its total liabilities.

Call Option

A contract that gives an investor the right to buy a specified asset at a predetermined price and date prior to the security's stated maturity, if any (common stock doesn't have a maturity), or the date that the issuer makes the final payment to the security holder. (See Put Option.)

Call Provision

A bond feature that allows the issuer to retire the debt, in full or in part, prior to the bond's stated maturity date. Such a feature is favorable to the borrower, who can retire the bond and replace it with a lower-coupon issue if market rates fall. Conversely, such a feature is detrimental to the investor, who risks losing the higher-coupon bond when rates fall. Because of this disadvantage to the investor, callable bonds typically yield more than otherwise comparable bonds without a call provision. (See Put Provision.)

Cap – Weighted Index

An index weighted by the market capitalization of each security in the index. Larger-cap companies thus account for a greater portion of the index. For example, if a company's market capitalization is \$1 billion and the market capitalization of all securities in the index is \$100 billion, the company would be 1% of the index. An index may also be fixed weighted, with each security, sector or country having a specified weight; fixed-weight indices are often equal weighted. (See Equal-Weighted Index.)

Contribution Deficiencies (Excess Contributions)

The difference between the Annual Required Contributions of the Employer (ARC) and the employer's actual contributions in relation to the ARC.

Convertible Bond

A bond that, at the option of the issuer or the investor, can be exchanged for common stock of the issuing company, at a predetermined conversion ratio and at predetermined dates. Some convertible bonds are convertible throughout their lives. Although a convertible bond is chiefly a fixed-income instrument, its price tends to be highly influenced by the stock price.

Corporate Issues ("A" minimum rating)

Corporate bonds are sold by corporations to dealers called underwriters and then to the public in order to raise long-term funds for investment. Corporate bonds are the alternative to issuing stock for raising funds. Corporate bonds are also rated according to the ability of a firm to pay its debt. The rating scale ranges from AAA to D.

Cost-of-Living Adjustment (COLA)

An increase in pension benefits after retirement that offsets the effects of inflation in the economy.

Debt –To-Equity Ratio

A company's debt (borrowings) divided by the market value of its shareholder equity.

Decrements

Those types of activities by members of a pension system which cause them to no longer remain members, i.e., death, retirement, disability, and withdrawal. Decrements is a general term referring to any or all of these membership terminating events.

Defined Benefit Plan

In a retirement plan, benefits which are defined by a specific formula applied to a specific member compensation and/or specific years of service. The amount of the benefit is not a function of contributions or actual earnings on those contributions.

Defined Contribution Plan

A system providing pension benefits equal to the combined employer and employee contributions plus interest and minus administrative expenses.

Derivative

A tradable financial instrument that derives its value from underlying assets-such as stocks, bonds, market indices, commodities, and livestock. It is typically a contract based on the buyer's/seller's assumptions regarding the future price of the underlying assets. Given the uncertainty of future prices, participants often hedge their bets by entering into a contract for a future sale or purchase at a specified price. This contract, or financial instrument, is the derivative. (See Current Coupon.)-

Domestic Equities

Commonly referred to as "stock", equity issues are the most important source of capital for firms, representing a claim on the assets and earnings of a business. The owners of stock are actually owners of the firm. Domestic equities are stocks of companies that are incorporated in the United States.

Duration

A measure of a bond's price sensitivity to changes in interest rates, expressed in years. Duration approximates how much a bond's price will change if interest rates change by a given amount. For each year of duration, a bond's price will fall (or rise) roughly one percentage point for each one-percentage-point increase (or decrease) in yield. Thus, a bond with a longer duration will perform worse when rates rise than a bond with a shorter duration; conversely, it will perform better when rates fall. Technically, duration is the weighted average term to maturity of the bond's cash flows. Thus, it is shorter than maturity for coupon-bearing bonds, which make annual or semiannual payments throughout the life of the bond. Duration is an excellent approximation of price sensitivity when interest-rate changes are small, but it becomes less accurate when rate changes are large. (See Convexity)

Earnings Per Share (Eps)

A company's net profit divided by the number of common shares outstanding.

Equal-Weighted Index

An index in which all the securities are given equal weight. As soon as the price of one security changes, it is no longer equal weighted. Therefore, such indices are rebalanced on a quarterly, semiannual or annual basis.

Equity

Ownership of a company in the form of shares that represent a claim on the corporation's earnings and assets. Common stockholders have the right to vote on directors and other key matters. While preferred stockholders lack voting rights, they have priority in dividend payments. A corporation can authorize additional classes of stock, each with its own set of contractual rights.

Equity Risk Premium

A forward-looking estimate of how much equities are likely to outperform bonds. Equity investors typically demand a higher return due to their greater risk of not receiving cash flows for their investments.

Excess Return

Difference between returns, which may be applied to managers or sectors. When referring to a manager or portfolio, the excess return is typically the same as the active return - the difference between the manager's/portfolio's return and the benchmark's. A fixed-income sector's excess return is the difference between its return and that of a comparable-duration government bond: If short-term government security returns 4%, the excess return is 2%. (See Risk-Free Rate.)

Exchange-Trade Fund (ETF)

An instrument that provides exposure to an index and is traded on a stock exchange. The price of these units depends on the prevailing market prices of the underlying index components. ETFs offer investors a low-cost, liquid means to invest in indices; they are essentially an alternative to an index portfolio.

Experience Study

A periodic review and analysis of the actual experience of the system which may lead to a revision of one or more Actuarial Assumptions. Actual rates of Decrement and salary increases are compared to the actuarially assumed values and modified as deemed appropriate by the Actuary.

Fair Value

A price deemed to accurately reflect the value of a company, asset or financial instrument and thought to be equitable for both buyer and seller. Fair value is generally calculated based on measureable financial performance and potential. In the futures market, fair value refers to the relationship between the futures contract on a market index and the actual value of the index. When futures are above fair value, traders are betting that the market index will go higher. The converse is true when futures fall below fair value. (See Discount to Fair Value.)

Fiscal Note

Estimate prepared by an independent actuary regarding the cost of pension legislation and policy changes.

Frozen Actuarial Accrued Liability

That portion of the Actuarial Present Value of Projected Benefits which is separated as of a valuation date and frozen under certain Actuarial Cost Methods. Generally, this separated portion is the sum of an initial Unfunded Actuarial Accrued Liability and any increments or decrements in the Actuarial Accrued Liability established subsequently as a result of changes in pension plan benefits or Actuarial Assumptions.

Funding Period

The number of years in the future that will be required to fund (i.e., pay off or eliminate) the Unfunded Actuarial Accrued Liability, based on the Actuarial Assumptions and assuming no future Actuarial Gains or Losses.

Future Benefits

Benefits specified in the law which will become payable at some time in the future when the member satisfies the requirement to receive pension benefits.

Future Contributions

Contributions to be made by the member or the State in the future, as required by law.

Growth Stock

A company that is expected to generate above-average revenue and earnings growth relative to its industry or the overall market. Such companies usually pay little or no dividend, preferring to use excess cash to finance expansion. However, because of the company's rapid earnings growth, investors typically expect the stock's price appreciation over time to more than compensate for the lack of short-term dividends. (See Defensive Stock.)

Hedging

A trading practice aimed at limiting financial loss in an asset due to unexpected price changes. For example, cross-border securities investors need to exchange their home currencies for the local currencies of the markets in which they're investing in order to make the purchases. Through hedging instruments such as forwards or futures contracts, they can arrange to re-exchange the currencies at fixed prices at specified points in the future. This arrangement allows an investor to gain exposure to price changes in the underlying security without having to risk depreciation of the home currency relative to the local currency, which would lower the total value of the transaction when the proceeds are brought back home. There are many forms of hedging, which, in effect, seeks to neutralize a specific risk.

High Yield Bonds

Bond that has a rating of BB or lower and that pays a higher yield to compensate for its higher level of default risk when compared to investment-grade bonds.

Hybrid Security

A security that combines characteristics of two or more financial instruments, generally debt and equity. The most common type of hybrid is a so-called convertible bond, which is a fixed-income security that can be exchanged for common stock. Another popular type of hybrid is a Basket D. Basket Ds, which are issued by banks and insurance companies, are considered 75% equity and 25% debt. Hybrid securities are typically lower in the capital structure than senior corporate bonds, so recovery rates in times of corporate financial stress tend to be lower; however, debt-equity hybrids usually rank ahead of common stock. (See Convertible Bond.)

Information Ratio

The ratio of a portfolio's excess return, or premium, to its tracking error, or the standard deviation of the premium over the period being measured. It is designed to measure how much excess return a manager delivers for each unit of risk. A higher number indicates a more favorable balance of reward to risk than a lower number. A positive number indicates that the portfolio outperformed, and a negative number indicates underperformance. (See Excess Return and Tracking Error.)

Investment Contracts

Issued by insurance companies, these pooled investment products have a limited guarantee of principal and a predetermined interest rate to be credited over the investment's life. Although the guarantee may imply the protection of principal, that guarantee is only as good as the insurer's claims-paying ability.

Investment Return Assumption (Discount Rate)

The rate used to adjust a series of future payments to reflect the time value of money.

Level Percentage of Projected Payroll Amortization Method

Amortization payments are calculated so that they are a constant percentage of the projected payroll of active plan members over a given number of years. The dollar amount of the payments generally will increase over time as payroll increases due to inflation; in dollars adjusted for inflation, the payments can be expected to remain level.

Leverage

In a financial context, the degree to which a business or asset is financed by borrowing. High financial leverage is generally regarded as a negative for a company, since it increases the risk of bankruptcy in the event of a financial squeeze and can make future borrowing more difficult and/or expensive. However, leverage to finance highly profitable new ventures, for example, can result in higher returns to shareholders. "Leveraged investing" is when investors borrow money to purchase more securities or other assets than they could with cash. This allows an investor to capture more of the upside if a security appreciates, but increases the loss if the security depreciates.

Liability

A legal obligation to pay a specific amount within a defined time frame. For businesses, this typically includes debt payments, accounts payable, taxes, wages and similar pending expenses recorded on a company's balance sheet. Short-term liabilities are those payable within the next year, and long-term liabilities are those payable over a longer time frame.

Libor (London Interbank Offered Rate)

The interest rate that banks charge one another in the short-term international interbank market. It applies to loans borrowed anywhere from one day to five years. LIBOR is officially fixed each day by a handful of large London banks, although the actual rate changes throughout the day. It is also used as a benchmark to set other short-term interest rates, which are sometimes set as specific increments relative to LIBOR (e.g. LIBOR plus 2%)

Liquidity

The ease with which an asset can be bought or sold quickly. High liquidity means that an asset can easily be exchanged for currency, and low liquidity means that supply and demand are somewhat constrained. Highly liquid assets tend to have more narrow bid-ask spreads; illiquid assets tend to have wide bid-ask spreads.

Long – Duration Assets

Securities or other assets whose cash flows to investors tend to be further out in the future. In equity markets, these are typically companies that pay little or no dividends, often because they are reinvesting most of their earnings. The term is most typically used in conjunction with growth stocks but may also apply to emerging market stocks and other assets.

Market Capitalization

Also referred to as market cap, it reflects the total equity of a company. A company's market capitalization is determined by multiplying the number of shares outstanding by the current stock price. Stock markets are frequently subdivided in terms of capitalization, with typical groups often including large-cap (those with the largest capitalizations), mid-cap (medium-size companies) and small-cap (the smallest publicly traded companies). Each group has distinct attributes and performance patterns, and spreading investments across the various groups tends to diversify risk.

Market-Related Value of Plan Assets

A term used with reference to the Actuarial Value of Assets. A market-related value may be market value (or estimated market value) or a calculated value that recognizes changes in market value over a period of, for example, three to five years.

Market Value

The current price of a security in the market, as reflected by the last reported price on an exchange, or the current bid-ask price if the security is traded over the counter. (See Bid-Ask Spread, Market Capitalization and Over the Counter.)

Market Weight

When a portfolio allocates the same percentage of assets to a specific security or group of securities as its benchmark. Also known as a "neutral weight."

Mark To Market

To record the value of open positions in a security, a portfolio or an account based on current prices, not the purchase price or "cost basis." This technique allows any interim gain or loss to be recognized for tax or accounting purposes even though the positions have not yet been closed out.

Maturity

The date when, or the remaining time until, an issuer is obligated to deliver the final coupon and principal payments owed to a bondholder. Bonds with a remaining term to maturity of one to five years are generally considered short-term; those maturing between six and 12 years out are considered intermediate-term; and those with maturities beyond 12 years are considered long-term. Bonds maturing in less than one year are categorized as cash equivalents.

Measurement Date

The date as of which plan assets and obligations are measured.

Money Market Funds

Customers pool their money into a fund that then purchases short-term debt such as Treasury bills and commercial paper in order to earn a high rate of return while maintaining liquidity.

Mortgage-Backed Securities

A fixed income type investment whose cash flow depends on the cash flow from an underlying pool of mortgages. Examples include: mortgage pass-through securities and mortgage-backed bonds.

Net Asset Value (Nav)

The dollar value of a mutual-fund share, calculated by dividing the fund's total net assets (assets minus liabilities) by the total number of shares outstanding. NAV, which is typically calculated at the end of each day, can change constantly to reflect changes in the value of a fund's holdings.

Net Pension Obligation

The cumulative difference since the effective date of this statement between annual pension cost and the employer's contributions to the plan, including the pension liability (asset) at transition, and excluding short-term differences and unpaid contributions that have been converted to pension-related debt.

Normal Cost

That portion of the Actuarial Present Value of pension plan benefits and expenses which is allocated to a valuation year by the Actuarial Cost Method. The actuarial cost to fund the benefits provided by the system were the funding to begin at date of hire. It is expressed as a percent of pay and is equal to the present value at hire of all possible benefits of the system divided by the present value of anticipated future compensation to be received by the new member. In the aggregate, it must be less than the total Future Contribution to the system if the Unfunded Actuarial Accrued Liability is to be amortized. Otherwise there must be a funding surplus sufficient in size to offset any contributions rate shortfall.

Open Group/Closed Group

Terms used to distinguish between two classes of Actuarial Cost Methods. Under an Open Group Actuarial Cost Method, Actuarial Present Values associated with expected future entrants are considered; under a Closed Group Actuarial Cost Method, Actuarial Present Values do not consider the impact of future entrants.

Option

A contract that provides the right to buy or sell a specific asset such as a stock, a commodity or a currency at a particular price during a defined period of time. The right to buy is referred to as a “call option,” while the right to sell is known as a “put option.” Although option holders have the right to buy or sell, they are not obligated to do so.

Over The Counter (OTC)

Securities not listed on an established exchange such as the London Stock Exchange, Tokyo Stock Exchange or New York Stock Exchange, but rather traded by broker-dealers who negotiate directly with one another over computer networks and by telephone. Stocks traded over the counter may be more speculative, since these companies have often not yet met the size or stability requirements for listing on an established exchange and have less accurate pricing data and other information readily available. Still, these trades tend to fall under the oversight of relevant regulatory bodies. Many bonds trade over the counter rather than on an exchange. Also known as “unlisted securities.”

Overweight

When a portfolio allocates a larger percentage of assets to a specific security or group of securities than its benchmark does. (See Benchmark)

Parameters

The set of requirements for calculating actuarially determined pension information included in financial reports.

Par Or Face Value

The amount of principal that the issuer must pay the bondholder at maturity. Although an individual bond typically has a par value of \$1,000, the term “par” is often used interchangeably with 100 in the context of a bond’s price. (See Bond.)

Payroll Growth Rate

An actuarial assumption with respect to future increases in total covered payroll attributable to inflation; used in applying the level percentage of projected payroll amortization method.

Portability

Relates to an employee's ability to move pension credit and years of vesting when changing jobs.

Preferred Stock

A type of equity ownership in a corporation that is senior to common stock. For example, the firm may pay a specified dividend to preferred stock before any common stock dividends are paid. Also, preferred owners have a prior claim on any assets of the firm in the event of a liquidation.

Premium Coupon

A rate above current coupon. Bonds with premium coupons are typically priced above par. (See Current Coupon and Discount Coupon.)

Prepaid Pension Cost

Cumulative employer contributions in excess of accrued net pension cost.

Present Value

The actuarially determined lump sum value as of the valuation date of a series of payments to be made in the future, where the lump sum value is equal to the sum of the discounted value of each future payment. The discounted value of each payment is the product of a) the amount of the payment, (b) the probability that the payment will be made (based on the current actuarial assumptions as to future experience), and (c) the time value of money based on the Investment Return Assumption.

Price-To-Book Ratio (P/B)

A comparison of a stock's market value with its book value, calculated by dividing the current closing price of the stock by the latest quarter's book value per share.

Price-To-Growth Ratio (PEG)

A ratio used to determine a stock's current value, calculated by dividing the price/earnings ratio by the annual earnings-per-share growth and indicates a stock's potential value. A lower PEG means that the company's growth is priced more attractively than its peers.

Projected Benefits

Those pension plan benefits which are expected to be paid at various times under a particular set of Actuarial Assumptions, taking into account such items as the effect of advancement in age and past and anticipated future compensation and service credits.

Put Option

A Put Option is a financial contract that gives the holder the right, but not the obligation, to sell an asset at a predetermined price on or before a particular date. (See Call Option)

Put Provision

A bond feature that allows the investor to redeem the bond at par value before the bond's stated maturity date. A put provision is typically valid only for predetermined dates and would only be attractive to the investor if the bond's market value declined below par. Such a feature is favorable to the investor and detrimental to the issuer. Because of their potential advantage to the investor, puttable bonds typically yield less than otherwise comparable bonds without a put provision. (See Call Provision.)

Reciprocity

Reciprocity relates to an employee's ability to move pension credit when changing jobs from one public sector to another under conditions that force the employee to change pension plan membership. Reciprocity provisions allow such employees to move pension credit between systems.

Relative return

An asset's or a portfolio's return over a period of time relative to that of a chosen benchmark. It is calculated as the difference between the asset's absolute return and the benchmark's performance. (See Absolute Return and Benchmark)

Return on Equity (Roe)

A measure of how much profit a company is able to generate with the capital provided by shareholders. It is calculated by dividing after-tax income for a specified time period (e.g., trailing 12 months, trailing five years, and forward 12 months) by the book value. ROE is expressed as a percentage.

Risk

Risk means in common parlance, the chance of loss or of something bad occurring. In financial parlance, it usually means the uncertainty of outcomes due to one or many causes; it can be positive as well as negative. Return is usually measured by the standard deviation of returns—in other words, the extent to which returns may vary from the norm. Volatile assets tend to have a wider range of possible returns and thus are said to be higher-risk.

Risk-Free Rate

Risk-Free Rate is an investment with a predictable rate of return. An example is a short-term government bond. A short-term government bond has the explicit backing of a government, and the time period before the bond matures is short enough to minimize the risks of inflation and market interest-rate changes. Its yield is therefore considered risk-free. (See Credit Risk)

Risk Premium

Risk Premium is the expected return above the risk-free rate that investors demand to compensate for the volatility of returns or the possibility of default of risky assets. (See Risk-Free Rate)

Securitizations

Securitizations are the process of creating a tradable financial instrument from a pool of underlying assets, such as loans or mortgages, which generate an income stream for the issuers. Securitization allows issuers to remove assets from their balance sheets, thereby freeing up capital for other uses. It also allows investors to better diversify risk.

Spread

The term spread means the difference between two variables, such as a security's bid and ask prices (bid-ask spread). In the bond market, the "yield spread" is the difference in yield between bonds, most often between the yield of a bond and a benchmark such as a government bond, swap or LIBOR. Valuation spreads measure the difference between expensive and cheap segments of the market.

Standard Deviation

A statistical measure of risk that shows how aligned or at variance the returns of an asset, industry or fund are relative to their historical performance.

Style Drift

Style drift means the tendency of a portfolio manager to stray from its investment philosophy and process to boost short-term returns.

Swap

A contract between two parties to exchange future cash flows based on a set principal amount. An interest-rate swap normally involves swapping fixed-rate and floating-rate payments in the same currency. Other common types include currency swaps and credit default swaps.

Systemic Risk

A risk or event that affects an entire financial market or system, such as a stock market crash or banking-system failure. Systemic risks cannot be avoided through diversification. (See Factor Risk and Idiosyncratic Risk)

Total Return

The return on an investment, including price appreciation and depreciation, as well as income from dividends or interest

Tracking Error

The variance of a portfolio's investment returns relative to those of its benchmark or index. (See Active Risk, Information Ratio and Standard Deviation)

Tranche

When a bond's cash flows are repackaged as a collateralized debt obligation (CDO) or a portfolio of mortgage securities is repackaged as a collateralized mortgage obligation (CMO), the various securities constituting the CDO or CMO are called tranches. Each tranche within a deal has a different risk/return profile, and the tranches trade separately from one another.

Transaction Costs

The costs incurred when buying or selling an asset security, such as commission, fees and any indirect taxes.

Underweight

Underweight means when a portfolio allocates a smaller percentage of assets to a specific security or group of securities than its benchmark does. (See Benchmark)

Unfunded Accrued Pension Cost

Cumulative net pension cost accrued in excess of the employer's contributions.

Unfunded Actuarial Accrued Liability (UAAL)

The excess of the Actuarial Accrued Liability over the Actuarial Value of Assets

Unfunded Frozen Actuarial Accrued Liability

The portion of the Frozen Actuarial Accrued Liability remaining after the addition of interest and the deduction of Amortization Payments

U.S. Government Issues

These debt instruments are backed by the full faith and credit of the U.S. Government. They are viewed by market participants as having no credit risk and their interest rates are used as benchmarks throughout the U.S. and international capital markets.

Valuation

Valuation is the worth of an asset or a company using various techniques or the value of an investment portfolio's holdings at a specific date.

Value Risk Premium

The anticipation return premium of value stocks versus the broader market. (See Value Stock)

Value Stock

A stock that is underpriced by the market relative to its long-term fundamentals, such as dividends, earnings and sales; Such stocks tend to have a high dividend yield, low price-to-book ratio and/or low price-to-earnings ratio.

Vesting Requirements

Requirements that employees work a specific length of time before receiving the right to a pension benefit.

Volatility

The extent to which the price of a financial asset or market fluctuates, measured by the standard deviation of its returns; Volatility is a commonly cited risk measure. (See Standard Deviation.)

Yield

Yield means a component of the return on an investment. In the equity market, a share's dividend yield is its annual dividend payment as a percentage of the share's market price. In the fixed-income market, a bond's yield is its annual interest payment as a percentage of the bond's market price. Various measures of yield exist: most notably, current yield, which considers only coupon interest; and yield to maturity, which is the rate that will make the present value of the bonds expected cash flows equal to the bond's market price.

Yield Curve

A line connecting the yields of bonds from one end of the maturity spectrum to the other; because yields typically rise sharply at the short end of the maturity spectrum and rise more gradually at longer maturities, the plotted line usually forms a curve. However, depending on a host of factors, yield curves may be steeply upward-sloping, flat, inverted, straight, bowed or even kinked.